S. HRG. 101-762

RECOGNITION OF MOWA BAND OF CHOCTAW INDIANS; AROOSTOOK BAND OF MIMACS SETTLEMENT ACT; PONCA RESTORATION ACT; AND JENA BAND OF CHOCTAW RECOGNITION ACT

HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
ONE HUNDRED FIRST CONGRESS
SECOND SESSION

ON

S. 381

TO PROVIDE FEDERAL RECOGNITION OF THE MOWA BAND OF CHOCTAWS INDIANS OF ALABAMA

AND

S. 1413

TO SETTLE ALL CLAIMS OF THE AROOSTOOK BAND OF MICMACS RESULTING FROM THE BAND'S OMISSION FROM THE MAINE INDIAN CLAIMS SETTLEMENT ACT OF 1980

AND

S. 1747

TO PROVIDE FOR THE RESTORATION OF FEDERAL RECOGNITION OF THE PONCA TRIBE OF NEBRASKA

AND

S. 1918

TO PROVIDE FOR FEDERAL RECOGNITION OF THE JENA BAND OF CHOCTAWS OF LOUISIANA

MARCH 28, 1990
WASHINGTON, DC

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RECOGNITION OF MOWA BAND OF CHOCTAW INDIANS; AROOSTOOK BAND OF MICMACS SETTLEMENT ACT; PONCA RESTORATION ACT; AND JENA BAND OF CHOCTAW RECOGNITION ACT

WEDNESDAY, MARCH 28, 1990

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 2:12 p.m. in room 485, Russell Senate Office Building, Hon. Daniel K. Inouye (chairman of the committee) presiding.

Present: Senator Inouye.

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII, CHAIRMAN, SELECT COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. Before we proceed, I would like to announce that technically this hearing is unofficial because of a ruling by the leadership that official hearings cannot be held this afternoon. However, we have with us an official stenographer to take notes of this event. Furthermore, when the proceedings are completed, at an appropriate time, all of your statements will be made part of the official record. Even though technically we are not officially sitting here, you can be assured that as far as the record is concerned, it will be official.

Today the Select Committee on Indian Affairs will receive testimony on four separate bills; one to restore Federal recognition to the Ponca Tribe of Nebraska, second to recognize the Aroostook Band of Micmac Indians and settle their claims in the State of Maine, and two bills to extend Federal recognition to the Mowa Band of Choctaw Indians in the State of Alabama, and the Jena Band of Choctaw Indians in the State of Louisiana.

Each of these tribes has a separate history, a separate case for recognition as a tribe, and a separate reason to seek a legislative solution to their problem.

The committee has invited tribal representatives of each group to testify. The committee has also requested that each group be accompanied by an expert witness to provide responses to any technical questions the members of this committee may ask regarding the group's legislative recognition or restoration.

The Bureau of Indian Affairs [BIA] has been invited to submit written testimony for the record and will be invited to express the Department's views on these measures.

I should advise you that this committee has long been interested in the problems of tribes seeking Federal recognition or acknowledgement as a tribe. This is a problem affecting a number of tribes and Indian groups throughout this land. For this reason Senator McCain and I have been working on reform legislation to address this problem on a comprehensive basis.

The record of our informal proceedings will remain open until the close of business on May 7, 1990.

[Text of S. 381, S. 1413, S. 1747, and S. 1918 follows:]

II

101st CONGRESS
1st Session

S. 381

To provide Federal recognition of the Mowa Band of Choctaw Indians of Alabama.

IN THE SENATE OF THE UNITED STATES

February 8 (legislative day, January 3), 1989

Mr. Shelby (for himself and Mr. Heflin) introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

---

A BILL

To provide Federal recognition of the Mowa Band of Choctaw Indians of Alabama.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

Section 1. This Act may be cited as the "Mowa Band of Choctaw Indians Recognition Act".

FEDERAL RECOGNITION

Sec. 2. Federal recognition is hereby extended to the Mowa Band of Choctaw Indians of Alabama. All Federal laws of general application to Indians and Indian tribes shall apply with respect to the Mowa Band of Choctaw Indians of Alabama.

RESTORATION OF RIGHTS

SEC. 3. (a) All rights and privileges of the Mowa Band of Choctaw Indians which may have been abrogated or diminished before the date of enactment of this Act by reason of any provision of Federal law that terminated Federal recognition of the Mowa Band of Choctaw Indians of Alabama are hereby restored and such Federal law shall no longer apply with respect to the Band or the members of the Band.

(b) Nothing in this Act may be construed to diminish any rights or privileges of the Mowa Band of Choctaw Indians of Alabama, or of the members of the Band, that existed prior to the enactment of this Act.

(c) Except as otherwise specifically provided in section 4 or any other provision of this Act, nothing in this Act may be construed as altering or affecting—

(1) any rights or obligations with respect to property,

(2) any rights or obligations under any contract, or

(3) any obligation to pay a tax levied before the date of enactment of this Act.

LANDS

SEC. 4. (a) All legal rights, title, and interests in lands that are held by the Mowa Band of Choctaw Indians of Alabama on the date of enactment of this Act are hereby transferred to the United States in trust for the use and benefit of the Mowa Band of Choctaw Indians of Alabama.

(b)(1) Notwithstanding any other provision of law, the Mowa Band of Choctaw Indians of Alabama shall transfer to the Secretary of the Interior, and the Secretary of the Interior shall accept on behalf of the United States, any interest in lands acquired by such Band after the date of enactment of this Act. Such lands shall be held by the United States in trust for the benefit of the Mowa Band of Choctaw Indians of Alabama.

(2) Notwithstanding any other provision of law, the Attorney General of the United States shall approve any deed or other instrument used to make a conveyance under paragraph (1).

(c) Any lands held in trust by the United States for the benefit of the Mowa Band of Choctaw Indians of Alabama by reason of this section shall constitute the reservation of such Band.

(d) The Congress finds that the provisions of this section are enacted at the request of the Mowa Band of Choctaw Indians of Alabama and are in the best interests of such Band.

SERVICES

SEC. 5. The Mowa Band of Choctaw Indians of Alabama, and the members of such Band, shall be eligible for all services and benefits that are provided by the Federal Government to Indians because of their status as Federally recognized Indians and, notwithstanding any other provision of law, such services and benefits shall be provided after the date of enactment of this Act to the Band, and to the members of the Band, without regard to the existence of a reservation for the Band or the location of the residence of any member of the Band on or near any Indian reservation.

CONSTITUTION AND BYLAWS

SEC. 6. (a) The Mowa Band of Choctaw Indians of Alabama may organize for its common welfare and adopt a constitution and bylaws in accordance with regulations prescribed by the Secretary of the Interior. The Secretary of the Interior shall offer to assist the Band in drafting a constitution and bylaws for the Band.

(b) Any constitution, bylaws, or amendments to the constitution or bylaws that are adopted by the Mowa Band of Choctaw Indians of Alabama shall take effect only after such constitution, bylaws, or amendments are filed with the Secretary of the Interior.

MEMBERSHIP

SEC. 7. (a) Until a constitution for the Mowa Band of Choctaw Indians of Alabama is adopted, the membership of the Band shall consist of every individual who—

(1) is named in the tribal membership roll that is in effect on the date of enactment of this Act, or

(2) is a descendant of any individual described in paragraph (1).

(b) After the adoption of a constitution by the Mowa Band of Choctaw Indians of Alabama, the membership of the Band shall be determined in accordance with the terms of such constitution or any bylaws adopted under such constitution.

REGULATIONS

Sec. 8. The Secretary of the Interior shall prescribe such regulations as may be necessary to carry out the purposes of this Act.

II

101st CONGRESS
1st Session

S. 1413

To settle all claims of the Aroostook Band of Micmacs resulting from the Band's omission from the Maine Indian Claims Settlement Act of 1980, and for other purposes.

IN THE SENATE OF THE UNITED STATES

July 26 (legislative day, January 3), 1989

Mr. Cohen (for himself and Mr. Mitchell) introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

---

A BILL

To settle all claims of the Aroostook Band of Micmacs resulting from the Band's omission from the Maine Indian Claims Settlement Act of 1980, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Aroostook Band of Micmacs Settlement Act".

SEC. 2. CONGRESSIONAL FINDINGS AND DECLARATION OF POLICY.

(a) Findings and Policy.—Congress hereby finds and declares that:

(1) The Aroostook Band of Micmacs, as represented as of the time of passage of this Act by the Aroostook Micmac Council, is the sole successor in interest, as to lands within the United States, to the aboriginal entity generally known as the Micmac Nation which years ago claimed aboriginal title to certain lands in the State of Maine.

(2) The Band was not referred to in the Maine Indian Claims Settlement Act of 1980 because historical documentation of the Micmac presence in Maine was not available at that time.

(3) This documentation does establish the historical presence of Micmacs in Maine and the existence of aboriginal lands in Maine jointly used by the Micmacs and other tribes to which the Micmacs could have asserted aboriginal title but for the extinguishment of all such claims by the Maine Indian Claims Settlement Act of 1980.

(4) The Aroostook Band of Micmacs, in both its history and its presence in Maine, is similar to the Houlton Band of Maliseet Indians and would have received similar treatment under the Maine Indian Claims Settlement Act of 1980 if the information available today had been available to Congress and the parties at that time.

(5) It is now fair and just to afford the Aroostook Band of Micmacs the same settlement provided to the Houlton Band of Maliseet Indians for the settlement of that Band's claims, to the extent they would have benefited from inclusion in the Maine Indian Claims Settlement Act of 1980.

(6) Since 1820, the State of Maine has provided special services to the Indians residing within its borders, including the members of the Aroostook Band of Micmacs. During this same period, the United States provided few special services to the Band and repeatedly denied that it had jurisdiction over or responsibility for the Indian groups in Maine. In view of this provision of special services by the State of Maine, requiring substantial expenditures by the State of Maine and made by the State of Maine without being required to do so by Federal law, it is the intent of Congress that the State of Maine not be required further to contribute directly to this settlement.

(b) PURPOSE.—It is the purpose of this Act to—

(1) provide Federal recognition of the Band;

(2) provide to the members of the Band the services which the United States provides to Indians because of their status as Indians; and

(3) place $900,000 in a land acquisition fund and property tax fund for the future use of the Aroostook Band of Micmacs.

SEC. 3. DEFINITIONS.

For the purposes of this Act:

(1) The term "Band" means the Aroostook Band of Micmacs, the sole successor to the Micmac Nation as constituted in aboriginal times in what is now the State of Maine, and all its predecessors and successors in interest. The Aroostook Band of Micmacs is represented, as of the date of enactment of this Act, as to lands within the United States, by the Aroostook Micmac Council.

(2) The term "Band Tax Fund" means the fund established under section 4(b) of this Act.

(3) The term "Band Trust Land" means land or natural resources acquired by the Secretary of the Interior and held in trust by the United States for the benefit of the Band.

(4) The term "land or natural resources" means any real property or natural resources, or any interest in or right involving any real property or natural resources, including (but not limited to) minerals and mineral rights, timber and timber rights, water and water rights, and hunting and fishing rights.

(5) The term "Land Acquisition Fund" means the fund established under section 4(a) of this Act.

(6) The term "laws of the State" means the constitution, and all statutes, regulations, and common laws of the State of Maine and its political subdivisions and all subsequent amendments thereto or judicial interpretations thereof.

(7) The term "Maine Implementing Act" means the Act entitled "Act to Implement the Maine Indian Claims Settlement" that was enacted by the State of Maine in chapter 732 of the Maine Public Laws of 1979, as amended by chapter 675 of the Maine Public Laws of 1981 and chapter 672 of the Maine Public Laws of 1985, and all subsequent amendments thereto.

(8) The term "Secretary" means the Secretary of the Interior.

SEC. 4. AROOSTOOK BAND OF MICMACS LAND ACQUISITION AND PROPERTY TAX FUNDS.

(a) LAND ACQUISITION FUND.—There is hereby established in the Treasury of the United States a fund to be known as the Aroostook Band of Micmacs Land Acquisition Fund, into which $900,000 shall be deposited by the Secretary following the appropriation of sums authorized by section 10.

(b) BAND TAX FUND.—(1) There is hereby established in the Treasury of the United States a fund to be known as the Aroostook Band of Micmacs Tax Fund, into which shall be deposited $50,000 in accordance with the provisions of this Act.

(2) Income accrued on the Land Acquisition Fund shall be transferred to the Band Tax Fund until a total of $50,000 has been transferred to the Band Tax Fund under this paragraph. No transfer shall be made under this subsection if such transfer would diminish the Land Acquisition Fund to a balance of less than $900,000.

(3) Whenever funds are transferred to the Band Tax Fund under paragraph (2), the Secretary shall publish notice of such transfer in the Federal Register. Such notice shall specify when the total amount of $50,000 has been transferred to the Band Tax Fund.

(4) The Secretary shall manage the Band Tax Fund in accordance with section 1 of the Act of June 24, 1938 (52 Stat. 1037; 25 U.S.C. 162a), and shall utilize the principal and interest of the Band Tax Fund only as provided in paragraph (5) and section 5(d) and for no other purpose.

(5) Notwithstanding the provisions of title 31, United States Code, the Secretary shall pay out of the Band Tax Fund, all valid claims for taxes, payments in lieu of property

taxes, and fees, together with any interest and penalties thereon—

(A) for which the Band is determined to be liable;

(B) which are final and not subject to further administrative or judicial review; and

(C) which have been certified by the Commissioner of Finance in the State of Maine as valid claims that meet the requirements of this paragraph.

(c) SOURCE FOR CERTAIN PAYMENTS.—Notwithstanding any other provision of law, if—

(1) the Band is liable to the State of Maine or any county, district, municipality, city, town, village, plantation, or any other political subdivision thereof for any tax, payment in lieu of property tax, or fees, together with any interest and penalties thereon, and

(2) there are insufficient funds in the Band Tax Fund to pay such tax, payment, or fee (together with any interest or penalties thereon) in full,

the deficiency shall be paid by the Band only from income-producing property owned by the Band which is not held in trust for the Band by the United States and the Band shall not be required to pay such tax, payment, or fee (or any interest or penalty thereon) from any other source.

(d) PROCEDURE FOR FILING AND PAYMENT OF CLAIMS.—The Secretary shall, after consultation with the

Commissioner of Finance of the State of Maine, and the Band, prescribe written procedures governing the filing and payment of claims under this section.

SEC. 5. AROOSTOOK BAND TRUST LANDS.

(a) IN GENERAL.—Subject to the provisions of section 4, the Secretary is authorized and directed to expend, at the request of the Band, the principal of, and income accruing on, the Land Acquisition Fund for the purposes of acquiring land or natural resources for the Band and for no other purposes. Land or natural resources acquired within the State of Maine with funds expended under the authority of this subsection shall be held in trust by the United States for the benefit of the Band.

(b) ALIENATION.—(1) Land or natural resources acquired with funds expended under the authority of subsection (a) and held in trust for the benefit of the Band may be alienated only by—

(A) takings for public use pursuant to the laws of the State of Maine as provided in subsection (c);

(B) takings for public use pursuant to the laws of the United States; or

(C) transfers made pursuant to an Act or joint resolution of Congress.

All other transfers of land or natural resources acquired with funds expended under the authority of subsection (a) and held in trust for the benefit of such Band shall be void ab initio and without any validity in law or equity.

(2) The provisions of paragraph (1) shall not prohibit or limit transfers of individual use assignments of land or natural resources from one member of the Band to another member of such Band.

(3) Land or natural resources held in trust for the benefit of the Band may, at the request of the Band, be—

(A) leased in accordance with the Act of August 9, 1955 (25 U.S.C. 415 et seq.);

(B) leased in accordance with the Act of May 11, 1938 (25 U.S.C. 396a et seq.);

(C) sold in accordance with section 7 of the Act of June 25, 1910 (25 U.S.C. 407);

(D) subjected to rights-of-way in accordance with the Act of February 5, 1948 (25 U.S.C. 323 et seq.);

(E) exchanged for other land or natural resources of equal value, or if they are not equal, the values shall be equalized by the payment of money to the grantor or to the Secretary for deposit in the land acquisition fund for the benefit of the Band, as the circumstances require, so long as payment does not exceed 25 percent of the total value of the interests in land to be transferred by the Band; and

(F) sold, only if at the time of sale the Secretary has entered into an option agreement or contract of sale to purchase other lands of approximate equal value.

(c) CONDEMNATION BY STATE OF MAINE AND POLITICAL SUBDIVISIONS THEREOF.—(1) Land or natural resources acquired with funds expended under the authority of subsection (a) and held in trust for the benefit of the Band may be condemned for public purposes by the State of Maine, or any political subdivision thereof, only upon such terms and conditions as shall be agreed upon in writing between the State and such Band after the date of enactment of this Act.

(2) The consent of the United States is hereby given to the State of Maine to further amend the Maine Implementing Act for the purpose of embodying the agreement described in paragraph (1).

(d) ACQUISITION.—(1) Lands and natural resources may be acquired by the Secretary for the Band only if the Secretary has, at any time prior to such acquisition—

(A) transmitted a letter to the Secretary of State of the State of Maine stating that the Band Tax Fund contains $50,000; and

(B) provided the Secretary of State of the State of Maine with a copy of the procedures for filing and payment of claims prescribed under section 4(d).

(2)(A) No land or natural resources may be acquired by the Secretary for the Band until the Secretary files with the Secretary of State of the State of Maine a certified copy of the deed, contract, or other conveyance setting forth the location and boundaries of the land or natural resources to be acquired.

(B) For purposes of subparagraph (A), a filing with the Secretary of State of the State of Maine may be made by mail and, if such method of filing is used, shall be considered to be completed on the date on which the document is properly mailed to the Secretary of State of the State of Maine.

(3) Notwithstanding the provisions of the first section of the Act of August 1, 1888 (40 U.S.C. 257) and the first section of the Act of February 26, 1931 (40 U.S.C. 258a), the Secretary may acquire land or natural resources under this section from the ostensible owner of the land or natural resources only if the Secretary and the ostensible owner of the land or natural resources have agreed upon the identity of the land or natural resources to be sold and upon the purchase price and other terms of sale. Subject to the agreement required by the preceding sentence, the Secretary may institute condemnation proceedings in order to perfect title, satisfactory to the Attorney General of the United States, in the United States and condemn interests adverse to the ostensible owner.

(4)(A) When trust or restricted land or natural resources of the Band are condemned pursuant to any law of the United States other than this Act, the proceeds paid in compensation for such condemnation shall be deposited into the Land Acquisition Fund and shall be reinvested in acreage within unorganized or unincorporated areas of the State of Maine. When the proceeds are reinvested in land whose acreage does not exceed that of the land taken, all the land shall be acquired in trust. When the proceeds are invested in land whose acreage exceeds the acreage of the land taken, the Band shall designate, with the approval of the United States, and within 30 days of such reinvestment, that portion of the land acquired by the reinvestment, not to exceed the area taken, which shall be acquired in trust. The land acquired from the proceeds that is not acquired in trust shall be held in fee by the Band. The Secretary shall certify, in writing, to the Secretary of State of the State of Maine the location, boundaries, and status of the land acquired from the proceeds.

(B) The State of Maine shall have initial jurisdiction over condemnation proceedings brought under this section. The United States shall be a necessary party to any such condemnation proceedings. After exhaustion of all State administrative remedies, the United States is authorized to seek judicial review of all relevant matters involved in such condemnation proceedings in the courts of the United States and shall have an absolute right of removal, at its discretion, over any action commenced in the courts of the State.

(5) Land or natural resources acquired by the Secretary in trust for the Band shall be managed and administered in accordance with terms established by the Band and agreed to by the Secretary in accordance with section 102 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450f) or other applicable law.

SEC. 6. LAWS APPLICABLE.

(a) FEDERAL RECOGNITION.—Federal recognition is hereby extended to the Aroostook Band of Micmacs. The Band shall be eligible to receive all of the financial benefits which the United States provides to Indians and Indian tribes to the same extent, and subject to the same eligibility criteria, generally applicable to other federally recognized Indians and Indian tribes.

(b) APPLICATION OF FEDERAL LAW.—For the purposes of application of Federal law, the Band and its lands shall have the same status as other tribes and their lands accorded Federal recognition under the terms of the Maine Indian Claims Settlement Act of 1980.

(c) ELIGIBILITY FOR SPECIAL SERVICES.—Notwithstanding any other provision of law authorizing the provision of special programs and services by the United States to

Indians because of their status as Indians, any member of the Band in Aroostook County, Maine, shall be eligible for such services without regard to the existence of a reservation or the residence of members of the Band on or near a reservation.

(d) AGREEMENTS WITH STATE REGARDING JURISDICTION.—The State of Maine and the Band are authorized to execute agreements regarding the jurisdiction of the State of Maine over lands owned by, or held in trust for the benefit of, the Band or any member of the Band.

SEC. 7. TRIBAL ORGANIZATION.

(a) IN GENERAL.—The Band may organize for its common welfare and adopt an appropriate instrument in writing to govern the affairs of the Band when acting in its governmental capacity. Such instrument and any amendments thereto must be consistent with the terms of this Act. The Band shall file with the Secretary a copy of its organic governing document and any amendments thereto.

(b) MEMBERS.—For purposes of benefits provided by reason of this Act, only persons who are citizens of the United States may be considered members of the Band except persons who, as of the date of enactment of this Act, are enrolled members on the Band's existing membership roll, and direct lineal descendants of such members. Membership in the Band shall be subject to such further qualifications as may be provided by the Band in its organic governing document, or amendments thereto, subject to approval by the Secretary.

SEC. 8. IMPLEMENTATION OF THE INDIAN CHILD WELFARE ACT.

For the purposes of this section, the Band is an "Indian tribe" within the meaning of section 4(8) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(8)), except that nothing in this section shall alter or affect the jurisdiction of the State of Maine over child welfare matters as provided by the Maine Indian Claims Settlement Act of 1980.

SEC. 9. FEDERAL FINANCIAL AID PROGRAMS UNAFFECTED BY PAYMENTS UNDER THIS ACT.

(a) STATE OF MAINE.—No payments to be made for the benefit of the Band pursuant to this Act shall be considered by any agency or department of the United States in determining or computing the eligibility of the State of Maine for participation in any financial aid program of the United States.

(b) BAND AND MEMBERS OF THE BAND.—(1) The eligibility for, or receipt of, payments from the State of Maine by the Band or any of its members shall not be considered by any department or agency of the United States in determining the eligibility of, or computing payments to, the Band or any of the members of the Band under any Federal financial aid program.

(2) To the extent that eligibility for the benefits of any Federal financial aid program is dependent upon a showing of need by the applicant, the administering agency shall not be barred by this subsection from considering the actual financial situation of the applicant.

SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated $900,000 for the fiscal year 1990 for transfer to the Aroostook Band of Micmacs Land Acquisition Fund.

SEC. 11. INTERPRETATION.

In the event of a conflict of interpretation between the provisions of the Maine Implementing Act or the Maine Indian Claims Settlement Act of 1980 and this Act, the provisions of this Act shall govern.

SEC. 12. LIMITATION OF ACTIONS.

No provision of this Act may be construed to confer jurisdiction to sue, or to grant implied consent to the Band to sue, the United States or any of its officers with respect to the claims extinguished by the Maine Indian Claims Settlement Act of 1980.

II

101ST CONGRESS
1ST SESSION

S. 1747

To provide for the restoration of Federal recognition to the Ponca Tribe of Nebraska, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 11 (legislative day, SEPTEMBER 18), 1989

Mr. EXON (for himself and Mr. KERREY) introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

---

A BILL

To provide for the restoration of Federal recognition to the Ponca Tribe of Nebraska, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Ponca Restoration Act".

DEFINITIONS

SEC. 2. For purposes of this Act—

(1) The term "Tribe" means the Ponca Tribe of Nebraska.

(2) The term "Secretary" means the Secretary of the Interior or the designated representative of the Secretary of the Interior.

(3) The term "Interim Council" means the Board of Directors of the Northern Ponca Restoration Committee, Inc.

(4) The term "member" means a person who is enrolled on the membership roll of the Tribe of June 10, 1965, that was compiled by the Bureau of Indian Affairs or is entitled to be enrolled as a member of the Tribe under section 7.

(5) The term "State" means the State of Nebraska.

FEDERAL RECOGNITION

SEC. 3. Federal recognition is hereby extended to the Ponca Tribe of Nebraska. All Federal laws of general application to Indians and Indian tribes (including the Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 461, et seq.), popularly known as the Indian Reorganization Act) shall apply with respect to the Tribe and to the members.

RESTORATION OF RIGHTS

SEC. 4. (a) All rights and privileges of the Tribe which may have been abrogated or diminished before the date of enactment of this Act by reason of any provision of Public Law 87-629 are hereby restored and such law shall no longer apply with respect to the Tribe or the members.

(b) Nothing in this Act may be construed to diminish any rights or privileges of the Tribe, or of the members, that exist prior to the enactment of this Act.

(c) The Secretary shall accept any real property that is transferred to the Secretary for the benefit of the Tribe. Such real property shall be accepted by the Secretary (subject to any rights, liens, or taxes that exist prior to the date of such transfer) in the name of the United States in trust for the benefit of the Tribe and shall be exempt from all taxes imposed by the Federal Government or any State or local government after such transfer.

(d) Except as otherwise specifically provided in any other provision of this Act, nothing in this Act may be construed as altering or affecting—

(1) any rights or obligations with respect to property,

(2) any rights or obligations under any contract,

(3) any hunting, fishing, trapping, gathering, or water rights of the Tribe or the members, or

(4) any obligation to pay a tax levied before the date of enactment of this Act.

SERVICES

SEC. 5. The tribe, and the members, shall be eligible for all services and benefits that are provided by the Federal Government to Indians because of their status as Federally recognized Indians and, notwithstanding any other provision of law, such services and benefits shall be provided after the date of enactment of this Act to the Tribe, and to the members, without regard to the existence of a reservation for the Tribe or the location of the residence of any member on or near any Indian reservation.

INTERIM GOVERNMENT

SEC. 6. Until such time as a constitution for the Tribe is adopted in accordance with section 8(a) and tribal officials are elected under section 8(b), the Tribe shall be governed by the Interim Council.

MEMBERSHIP ROLL

SEC. 7. (a) Until a tribal constitution is adopted in accordance with section 8, the Interim Council shall take such measures as will insure the continuing accuracy of the membership roll of the Tribe.

(b)(1) Until a tribal constitution is adopted in accordance with section 8, an individual shall be eligible for membership in the Tribe, and the name of the individual shall be placed on the membership roll of the Tribe, if—

(A) the individual is living and is not an enrolled member of another Indian tribe that is recognized by the Federal Government, and

(B) the individual—

(i) was listed on the tribal membership roll of June 18, 1965, that was compiled by the Bureau of Indian Affairs,

(ii) was entitled to be listed on the membership roll of June 18, 1965, that was compiled by the Bureau of Indian Affairs, but was not listed, or

(iii) is a lineal descendant of an individual, living or deceased, who is described in clause (i) or (ii).

(2) Any individual who is excluded from the membership roll of the Tribe by the Interim Council may appeal to the Secretary for a determination of the eligibility of the individual for membership in the Tribe. The Interim Council shall include on the membership roll any such individual that the Secretary determines in such an appeal to be eligible for membership in the Tribe.

(c) After adoption of a tribal constitution in accordance with section 8, the constitution of the Tribe, and the bylaws adopted under that constitution, shall govern membership in the Tribe.

TRIBAL CONSTITUTION

SEC. 8. (a) Before the earlier of—

(1) the date that is 60 days after the date on which the Interim Council submits to the Secretary—

(A) a written request of the Interim Council that an election to adopt a tribal constitution be held, and

(B) a copy of the membership roll of the tribe that the Interim Council certifies to be an accurate and up-to-date roll, or

(2) the date that is 1 year after the date of enactment of this Act,

the Secretary shall conduct, by secret ballot, an election to adopt a constitution for the Tribe. Absentee balloting shall be permitted in the election without regard to the residence of the voter. Notice of the election shall be provided to the members of the Tribe at least 60 days prior to the date of the election. In every other regard, the election shall be held according to the procedures applicable to elections under section 16 of the Act of June 18, 1934 (48 Stat. 987; 25 U.S.C. 476).

(b) By no later than the date that is 120 days after the date on which the Tribe adopts a constitution under subsection (a), the Secretary shall conduct an election by secret ballot to elect officials of the Tribe, as provided in the constitution of the Tribe. The election shall be conducted according to the procedures described in subsection (a), except to the extent that such procedures conflict with the constitution of the Tribe.

(c) Notwithstanding the previous negative vote by the Tribe in an election conducted under section 18 of the Act of June 18, 1934 (48 Stat. 988; 25 U.S.C. 478), the Tribe shall be treated as having made an affirmative vote in an election conducted under section 18 of such Act.

(d) Notwithstanding any other provision of law, the governing body of the Tribe established under the constitution of the Tribe that is adopted under subsection (a) shall be treated as an Indian tribal government for purposes of the Internal Revenue Code of 1986.

REGULATIONS

SEC. 9. The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this Act.

ECONOMIC DEVELOPMENT PLAN

SEC. 10. (a) The Secretary shall—

(1) enter into negotiations with the governing body of the Tribe to establish a plan for economic development for the Tribe;

(2) in accordance with this section, establish such a plan; and

(3) upon the approval of such plan by the governing body of the Tribe (and after consultation with the State and local officials pursuant to subsection (b)), shall submit such plan to the Congress by no later than the date that is 2 years after the date of enactment of this Act.

(b)(1) To ensure that legitimate State and local interests are not prejudiced by the economic development plan established under subsection (a), the Secretary shall notify and consult with the appropriate officials of the State and all appropriate local governmental officials in the State with respect to the proposed economic development plan. The Secretary shall provide complete information on the proposed economic development plan to such officials, including the restrictions imposed on such plan by subsection (c).

(2) During any consultation by the Secretary under this subsection, the Secretary shall provide such information as the Secretary may possess and shall request comments and additional information on the extent of any State or local service to the Tribe.

(c) Any economic development plan established by the Secretary under subsection (a) shall provide that—

(1) real property acquired by or for the Tribe shall be taken by the Secretary in the name of the United States in trust for the benefit of the Tribe;

(2) any real property taken in trust by the Secretary pursuant to such plan shall be subject to—

(A) all legal rights and interests in such land held by any person at the time of acquisition of such land by the Secretary, including any lien, mortgage, or previously levied and outstanding State or local tax, and

(B) foreclosure or sale in accordance with the laws of the State of Nebraska pursuant to the terms of any valid obligation in existence at the time of the acquisition of such land by the Secretary; and

(3) any real property transferred pursuant to such plan shall be exempt from Federal, State, and local taxation of any kind.

(d) The Secretary shall append to the economic development plan submitted to the Congress under subsection (a) a detailed statement—

(1) naming each individual consulted in accordance with subsection (b);

(2) summarizing the testimony received by the Secretary pursuant to any such consultation; and

(3) including any written comments or reports submitted to the Secretary by any individual named in paragraph (1).

II

101st CONGRESS
1st Session

S. 1918

To provide for Federal recognition of the Jena Band of Choctaws of Louisiana, and for other purposes.

IN THE SENATE OF THE UNITED STATES

November 17 (legislative day, November 6), 1989

Mr. Johnston introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

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A BILL

To provide for Federal recognition of the Jena Band of Choctaws of Louisiana, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

Section 1. This Act may be cited as the "Jena Band of Choctaws Recognition Act".

DEFINITIONS

Sec. 2. For purposes of this Act—

(1) The term "Tribe" means the Jena Band of Choctaws of Louisiana.

(2) The term "Secretary" means the Secretary of the Interior or the designated representative of the Secretary of the Interior.

(3) The term "Interim Council" means the Board of Directors of the Jena Band of Choctaws, Inc.

(4) The term "member" means an individual who is enrolled on the membership roll of the Tribe.

(5) The term "State" means the State of Louisiana.

FEDERAL RECOGNITION

SEC. 3. Federal recognition is hereby extended to the Jena Band of Choctaws of Louisiana. All Federal laws of general application to Indians and Indian tribes (including the Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 461, et seq.), popularly known as the Indian Reorganization Act) shall apply with respect to the Tribe and to the members.

RESTORATION OF RIGHTS

SEC. 4. (a) All rights and privileges of the Tribe which may have been abrogated or diminished before the date of enactment of this Act are hereby restored.

(b) Nothing in this Act may be construed to diminish any rights or privileges of the Tribe, or of the members, that exist prior to the enactment of this Act.

(c) The Secretary shall accept any real property that is transferred to the Secretary for the benefit of the Tribe. Such real property shall be accepted by the Secretary (subject to any rights, liens, or taxes that exist prior to the date of such transfer) in the name of the United States in trust for the benefit of the Tribe and shall be exempt from all taxes imposed by the Federal Government or any State or local government after such transfer.

(d) Except as otherwise specifically provided in any other provision of this Act, nothing in this Act may be construed as altering or affecting—

(1) any rights or obligations with respect to property,

(2) any rights or obligations under any contract,

(3) any hunting, fishing, trapping, gathering, or water rights of the Tribe or the members, or

(4) any obligation to pay a tax levied before the date of enactment of this Act.

SERVICES

SEC. 5. The Tribe, and the members, shall be eligible for all services and benefits that are provided by the Federal Government to Indians because of their status as Federally recognized Indians and, notwithstanding any other provision of law, such services and benefits shall be provided after the date of enactment of this Act to the Tribe, and to the members, without regard to the existence of a reservation for the Tribe or the location of the residence of any member on or near any Indian reservation.

INTERIM GOVERNMENT

SEC. 6. Until such time as a constitution for the Tribe is adopted in accordance with section 8(a) and tribal officials are elected under section 8(b), the Tribe shall be governed by the Interim Council.

MEMBERSHIP ROLL

SEC. 7. (a) The Secretary shall compile a roll of individuals who are members of the Jena Band of Choctaws of Louisiana.

(b) The qualifications for inclusion on the membership roll of the Tribe compiled under subsection (a) shall be determined by the Secretary in consultation with the Interim Council.

(c) The membership roll that is required to be compiled under subsection (a) shall be completed by no later than the date that is 1 year after the date of enactment of this Act.

(d) After adoption of a tribal constitution in accordance with section 8, the constitution of the Tribe, and the bylaws adopted under that constitution, shall govern membership in the Tribe.

TRIBAL CONSTITUTION

SEC. 8. (a) Before the earlier of—

(1) the date that is 6 months after the date on which the Secretary completes the membership roll that is required to be compiled under section 7(a), or

(2) the date that is 18 months after the date of enactment of this Act,

the Secretary shall conduct, by secret ballot, an election to adopt a constitution for the Tribe. Absentee balloting shall be permitted in the election without regard to the residence of the voter. Notice of the election shall be provided to the members of the Tribe at least 60 days prior to the date of the election. In every other regard, the election shall be held according to the procedures applicable to elections under section 16 of the Act of June 18, 1934 (48 Stat. 987; 25 U.S.C. 476).

(b) By no later than the date that is 120 days after the date on which the Tribe adopts a constitution under subsection (a), the Secretary shall conduct an election by secret ballot to elect officials of the Tribe, as provided in the constitution of the Tribe. The election shall be conducted according to the procedures described in subsection (a), except to the extent that such procedures conflict with the constitution of the Tribe.

(c) Notwithstanding any other provision of law, the governing body of the Tribe established under the constitution of the Tribe that is adopted under subsection (a) shall be treated as an Indian tribal government for purposes of the Internal Revenue Code of 1986.

REGULATIONS

SEC. 9. The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this Act.

ECONOMIC DEVELOPMENT PLAN

SEC. 10. (a) The Secretary shall—

(1) enter into negotiations with the governing body of the Tribe to establish a plan for economic development for the Tribe;

(2) in accordance with this section, establish such a plan; and

(3) upon the approval of such plan by the governing body of the Tribe, submit such plan to the Congress by no later than the date that is 3 years after the date of enactment of this Act.

(b)(1) To ensure that legitimate State and local interests are not prejudiced by the economic development plan established under subsection (a), the Secretary shall notify and consult with the appropriate officials of the State and all appropriate local governmental officials in the State with respect to the proposed economic development plan. The Secretary shall provide complete information on the proposed economic development plan to such officials, including the restrictions imposed on such plan by subsection (c).

(2) During any consultation by the Secretary under this subsection, the Secretary shall provide such information as the Secretary may possess and shall request comments and

additional information on the extent of any State or local service to the Tribe.

(c) Any economic development plan established by the Secretary under subsection (a) shall provide that—

(1) real property acquired by or for the Tribe shall be taken by the Secretary in the name of the United States in trust for the benefit of the Tribe;

(2) any real property taken in trust by the Secretary pursuant to such plan shall be subject to—

(A) all legal rights and interests in such land held by any person at the time of acquisition of such land by the Secretary, including any lien, mortgage, or previously levied and outstanding State or local tax, and

(B) foreclosure or sale in accordance with the laws of the State of Louisiana pursuant to the terms of any valid obligation in existence at the time of the acquisition of such land by the Secretary; and

(3) any real property transferred pursuant to such plan shall be exempt from Federal, State, and local taxation of any kind.

(d) The Secretary shall append to the economic development plan submitted to the Congress under subsection (a) a detailed statement—

(1) naming each individual consulted in accordance with subsection (b);

(2) summarizing the testimony received by the Secretary pursuant to any such consultation; and

(3) including any written comments or reports submitted to the Secretary by any individual named in paragraph (1).

The **Chairman**. We are pleased to welcome today two very distinguished Members of the U.S. Senate, Senator J. Bennett Johnston, the senior Senator of Louisiana, who will testify on behalf of the Jena Band of the Choctaw Indians, and Senator J. James Exon, senior Senator of Nebraska, who will testify on behalf of the Ponca Tribe of Nebraska.

If I may at this time call upon Senator Johnston.

STATEMENT OF HON. J. BENNETT JOHNSTON, U.S. SENATOR FROM LOUISIANA

Senator **Johnston**. Thank you very much, Mr. Chairman. I am delighted to be here to speak in behalf of the Jena Tribe of Choctaw Indians who are asking for reinstatement of Federal recognition.

This tribe was previously recognized by the Office of Indian Affairs in the 1930's but it has been denied its proper status and benefits for the past 50 years and is deserving, I think, of present recognition.

Therefore I have come before this committee to ask that this injustice be corrected and that the Jena Tribe be accorded its proper status without any further delay.

Before the coming of European settlers, the Choctaw Nation lived in the plains and hill country of central Louisiana and southwest Mississippi. During the 19th century the disruption of the Choctaw Nation by forced removals contributed to dispersed settlements of Choctaw groups throughout the south. The Jena Band is representative of Choctaw Bands that formed as separate entities from the Choctaw Tribes in the Mississippi area. Today the Jena Band of Choctaw Indians is a remarkably cohesive group consisting of about 120 members and residing in LaSalle Parish—that's county anywhere else—near Jena, Louisiana.

In 1936, the Jena Band was recognized by the U.S. Congress and the Department of the Interior when funds were appropriated by the Congress and specifically designated by the Office of Indian Affairs for the education of the Jena Band. These funds, which provided support for a separate Indian school to be operated under the direction of Mrs. Charles Penick, were continued for several years.

Then, in 1938, authority was granted for the transfer of members of the Jena Band who were willing to relocate to the Pearl River area in Mississippi. However, the majority of the Jena Band remained in Louisiana, and the subsequent abrogation of funds for the Jena Band was not only wrong, but unlawful. As the Congress is the only body granted the authority to revoke recognition and since no such action has been taken, the relationship between the Federal Government and the Jena Band of Choctaws remains intact.

Mr. Chairman, given this unique injustice it would wrong to require the Jena Band to undergo the current recognition procedure supervised by the BIA. As you are well aware, this procedure is lengthy, cumbersome, and expensive, particularly for a small band of 120. It takes the BIA an average of 10 years to process an application, and there is currently a backlog of over 100 applications which have yet to be processed.

While I understand that the current procedure is both necessary and appropriate in determining the proper status of most Indian groups, I assure you that the Jena Band is not such a group. The Jena case is unique in that clear and concise documentation exists which demonstrates their previous relationship with the Federal Government. With such convincing proof, there is no reason for the Jena Band to be subjected to the standard acknowledgment process. There is simply no need to waste more time and more money. The established acknowledgment procedure, however well-intentioned and necessary in most cases, will simply serve as an impediment to justice in this case.

I also understand that legislation is currently pending before the committee to reform the Federal acknowledgment process in order to facilitate the acknowledgment of tribal applications for Federal recognition. I fully support this idea and have signed on as a coauthor of this legislation. While I commend the committee for their desire to improve this procedure, I do not feel that the consideration of such reform measures should prevent the committee from dealing with this case at this time, 50 years is long enough for the Jena Band.

Unfortunately, despite such clear and convincing documentation, our requests for administrative action by the BIA to correct this situation have been refused. Having exhausted all other possibilities, it appears that our last recourse is to seek resolution through this legislation; I therefore respectfully ask that this committee act on S. 1918 and reinstate this group of only 120 who speak Choctaw as their native language. They are a cohesive group and I think, Mr. Chairman, that this injustice should be corrected.

[Prepared statement of Senator Johnston appears in appendix.]

The CHAIRMAN. Senator Johnston I can assure you that we will give this matter a hard look. I am well aware that about 50 years ago they did receive benefits. They had a school, I believe, in their area and received funds, but for some reason the Department of the Interior decided to cut it off. We will most certainly look into the case of the Jena Band and we will do whatever we can, sir.

Senator JOHNSTON. Thank you, Mr. Chairman. I appreciate that.

The CHAIRMAN. And now may I call upon my distinguished friend from Nebraska, Senator Exon.

STATEMENT OF HON. J. JAMES EXON, U.S. SENATOR FROM NEBRASKA

Senator EXON. Mr. Chairman, thank you very much.

Let me say what a pleasure it is to appear before the committee. I have the great honor of serving with you on the Commerce Committee, we've been very close friends for a number of years, and I just want to say that we in Nebraska are very proud of the job that you do in representing the wonderful State of Hawaii and also the U.S. Senator, in addition to the Senator of Hawaii that you have always been, especially with regard to the concerns of the great Indian people of the United States. You've just done an outstanding job. You've always listened, you've always been fair, and I personally, as a friend, want to congratulate you, not only for myself, but for the people of the state of Nebraska.

The **Chairman**. I thank you, sir.

Senator **Exon**. Mr. Chairman, I would like to take this opportunity, very briefly, to thank you for holding this hearing. I appreciate your efforts and I am certain that the Ponca Tribe of Nebraska does as well.

I would like to introduce to the committee 2 members of the Ponca Tribe that are here today, and that came especially for this hearing. Mr. Fred LeRoy is the Project Coordinator of the Northern Ponca Restoration Committee. Mr. Marshall Prichard is the Chairman of the non-profit corporation. I would like both of them to rise at this time and, along with the others from this organization who came here for this hearing today—the two that I have mentioned will be testifying later—would those two and the rest of the delegation please stand? Here they are right here, and they're over here. They're standing because they do not have any place to sit down, Mr. Chairman, and also in honor of you.

These people are here today to answer the questions you might have about their effort to restore Federal recognition to the Ponca Tribe in Nebraska. I was very pleased to be able to assist the Ponca Tribe in its effort. It is my understanding that very few of the tribes that lost recognition as part of the Termination Program that this Government followed in the 1950's and early 1960's have not yet had their recognition restored. And therefore, in this case, the Poncas are extremely unique.

For the Poncas, this means that there are over 1,100 former Ponca tribal members who are not recognized as Indians as a result of the termination of the Ponca Tribe in 1962.

I would like also like to take this opportunity to explain why the bill before you includes a provision for an Economic Development Plan for the Ponca Tribe. When I was first approached by the Ponca Tribe, the subject of establishing a reservation was discussed. I was not, and am not, supportive of the establishment of a large, residential reservation. The former tribal land was long ago sold and such a reservation would, in my opinion, be most difficult, if not impossible, to reestablish.

But the Ponca Tribe has not received any Federal assistance, Mr. Chairman, for over 27 years and I agree that we ought to explore ways to assist the economic development of the tribe and its members. Other restoration bills have taken this approach which has been incorporated into the proposal that is before you.

Mr. Chairman, I thank you once again for calling this hearing and listening to our concerns and our bill. Later on, at your discretion, Mr. LeRoy and Mr. Prichard will present their testimony and answer any questions that you might have.

I would also like to request at this time that a statement in support of S. 1747 by my great friend and colleague from Nebraska, Senator Robert Kerrey, that that be introduced into the record at this point.

The **Chairman**. Without objection, so ordered.

[Prepared statement of Senator Kerrey appears in appendix.]

The **Chairman**. I thank you very much, Senator Exon, for your fine statement. We will most certainly listen to Mr. LeRoy and Mr. Prichard. I am surprised that there are still tribes who have not had their restoration carried out ever since termination. We will do our best, sir.

Senator EXON. Thank you, Mr. Chairman.

The CHAIRMAN. And now, may I call upon the first panel to speak on S. 1918 on behalf of the Jena Band of the Choctaw Recognition Act? Mr. Jerry Jackson, Chairman of the Jena Band of the Choctaw Indians, accompanied by Mr. John "Bud" Shapard, Historian and Expert Witness.

Chairman Jackson.

STATEMENT OF JERRY JACKSON, CHAIRMAN, JENA BAND OF CHOCTAW, JENA, LA, ACCOMPANIED BY JOHN "BUD" SHAPARD, HISTORIAN, EXPERT WITNESS

Mr. JACKSON. Thank you very, much.

I have served three terms as tribal chairman for the Jena Band Choctaw Tribe in Louisiana. I would like to introduce with me today, Mr. John Shapard, who is presently assisting the Jena Band of Choctaw in their acknowledgment efforts. Mr. Shapard has volunteered his services for the tribe for the last year. Mr. Shapard was formerly the Chief of the Acknowledgment and Research Branch of the BIA and was responsible for drafting the criteria that is used today.

During his 24 year career with the BIA, Mr. Shapard has won numerous awards and the Jena Choctaw Tribe considers Mr. Shapard to be the leading expert in the nation as to the criteria, and to the application of the criteria, as far as Indian tribes are concerned.

I am before you today to ask your endorsement for S. 1918 which calls for the restoration of the Jena Choctaw Tribe as federally recognized. Our case is a simple one, but one which will call for congressional action.

In 1902 my great-grandfather, Willis Jackson, led the Jena Choctaw Tribe to Muskogee, OK to give testimony before the Dawes Commission. It took them 9 months to walk the 600 miles from Jena, LA to Muskogee, OK. Having no money, they had to work their way there and back again. Several died during this attempt to gain recognition. After their testimony, each family was identified as full-blooded Mississippi Choctaw and entitled to land allotments and other services from the BIA. But no land or benefits were received. On their return back to Louisiana in March 1903, they received a letter from the Dawes Commission asking them to come back again to Muskogee by August of that same year, a period of 4½ months.

This was an impossible timeframe for the Jena Choctaw people. After the Dawes Commission's letter, nothing else was followed up by the Commission to see whatever happened to this whole group of qualified, full-blood Indians.

On July 11, 1938, then Assistant Commissioner of the BIA William Zimmerman, Jr. authorized the transfer of the Jena Choctaw Tribe to reservation lands in Mississippi, where for the second time the Jena Choctaw Tribe would be eligible for services.

This time my grandfather, Chris Jackson, advised Mr. Hector, who was then Agency Superintendent of the BIA Office, Philadelphia, MS, that we were willing to relocate. But the Bureau did not follow through with this agreement. So, for the second time, we fell through the cracks of bureaucracy.

My members have never received the rights and privileges to which we are entitled as American Indians, only a legacy of suffering and poverty. With the unreasonable time and cost of the acknowledgment process, I hope you can see that S. 1918 is the humanitarian solution to our recognition efforts. We ask only for justice.

We were recognized 52 years ago by the Assistant Commissioner's actions. Since the BIA has a documented history of recognizing tribes in this same manner, and since Congress is not taking this recognition away from us, we remain recognized today, without any benefits and without any services.

As we have always done, we managed to hold on to our Indian identity. Our total membership consists of 148 people, nearly 60 percent of which possess 50 percent or more Choctaw blood quantum. We still speak the Choctaw language in the Mississippi Bogue Chitto dialect. We have had a continuous line of leadership and strong community ties.

The majority of our 148 members reside in LaSalle, Grant, and Rapides Parishes in Louisiana, a distance of 50 miles or less from the original resettlement location, when the tribe first came from Mississippi during the Choctaw removal.

Twice in history, the BIA has said "Jena, you are entitled." Twice in history the BIA has avoided the fulfilling of its commitment to the Jena Band.

Now the BIA demands that we enter into a process that ignores its past commitments and which will cost the Jena people at least another $100,000 and delay the restoration of the band's status for no less than an additional 3 and possibly as high as 7 or 8 years.

We say enough is enough. The Jena Band needs congressional help in the form of legislation to insure that the BIA will keep a promise made to our people 52 years ago.

Mr. Chairman, that concludes my statement.

[Prepared statement of Mr. Jackson appears in appendix.]

The CHAIRMAN. All right. Thank you very much, Mr. Chairman.

Since 1902 when your great-grandfather was in charge of the Jena Band—I assume he was in charge, was he not?

Mr. JACKSON. Yes, sir; he was chief at that time.

The CHAIRMAN. Does an identifiable, viable community of Jena Band Choctaw Indians still exist?

Mr. JACKSON. Yes, sir; all 148 members are related. There is a definite—

The CHAIRMAN. And throughout this period, have you had a system of government?

Mr. JACKSON. Yes, sir; it has changed since 1974. Before 1974 the oldest member of the tribe was the chief and he assumed the duties and responsibilities of that position. In 1974 the oldest of our group decided that we would have to incorporate under the State of Louisiana's regulations as a non-profit corporation, to go after funding sources, and to work on this petitioning effort. So in 1974, we started electing a five-member tribal council.

The CHAIRMAN. Did this government organization have any identifiable authority granted to them by the members?

Mr. JACKSON. We have Articles of Incorporation which list us as a referral office for our membership. Because the State of Louisiana's tribes do not get anything from the State of Louisiana, our tribe and our tribal office acts as a referral office for the members.

The CHAIRMAN. Is your band currently receiving any benefits from the Federal Government?

Mr. JACKSON. No, sir; we do receive ANA funding and we participate in an educational program.

The CHAIRMAN. Have you had an opportunity to look over the measure that Senator McCain and I introduced to reform this process?

Mr. JACKSON. Yes; I did.

The CHAIRMAN. Do you think that would be helpful to you?

Mr. JACKSON. I will tell you in my honest opinion, sir, that we could pass any process that any other tribe in the Nation can pass.

The CHAIRMAN. Personally, I think that you have got a good case. I would like to hear Mr. Shapard first, but as far as I am concerned, there seems to be obvious inequities here. Now we will hear from the expert.

Mr. Shapard.

Mr. SHAPARD. As I told Jerry, an expert is any fool from out of town, and I am from West Virginia.

I would first like to comment on the term "restoration" as opposed to "recognition" as far as our bill is concerned. We realize that this bill is not a restoration from a congressional termination. The Jena Band, in my opinion, was recognized in 1938 and they were administratively terminated just as effectively as if Congress had done it.

I have a long prepared statement which I'm just going to submit for the record, and I would like to make a brief comment.

One may very validly question why we contend that the Jena Choctaws have been recognized based on what appears to be just some very minimal services in terms of education. That is not the entire story. They did receive education for only 4 years from the BIA, however, in 1938 the Commissioner of Indian Affairs did authorize the band to move onto Federal Trust land and receive services for Federal Indians.

The BIA, if it is consistent about anything, is consistent in its zeal for trying to protect Indian land. In other words, to keep unauthorized people off of Federal Trust land. They do not want people who are not considered recognized on these Federal Trust lands.

When you have a memorandum from the Director of the Lands Division in 1938 saying that he has no objections to the Jena Band moving onto the new lands that were added to the Mississippi Choctaw Reservation for all Choctaws, and 6 months later, you have a letter signed by the Assistant Commissioner Zimmerman, you can bet your bottom dollar that Commissioner Zimmerman thought these people were recognized and fully eligible for services.

I have one last comment. I have served with the BIA for almost 25 years, that time almost entirely spent in tribal government and in Federal acknowledgment. In my opinion, both professional and personal, the Jena Band can meet any standards that are set up in the new bill or in the current procedure without any problems at all, and I believe that it is a travesty that they would have to be put through that sort of expense and pain when the BIA has in fact recognized them in the past.

Thank you.

[Prepared statement of Mr. Shapard appears in appendix.]

The **Chairman**. Thank you very much, Mr. Shapard.

When did you end your service with the BIA?

Mr. **Shapard**. It will be 2 years in July.

The **Chairman**. During that time, I gather that you must have opposed the legislative recognition of tribes, am I correct?

Mr. **Shapard**. Yes, sir; we did. You wonder why the change of position?

The **Chairman**. Yes.

Mr. **Shapard**. That is a very good question, Senator, thank you.

When we drafted the Acknowledgment Regulations, we knew that we were not going to cover all the sins of the Indian Reorganization Act. We knew that there were going to be viable Indian groups out there who were going to drop through the cracks. We also knew that those people would have to go for a legislative solution. We did not unilaterally oppose congressional legislation. In fact, in one case, we recommended that a group come to Congress and the BIA took the position that they would not oppose any legislation passed. I believe that there are specific cases in which the BIA should support legislation, and I think right now that Jena is one of those.

The reason for that being that the BIA has no clear standard by which they can determine whether a group has been recognized or not in the past. I have documented evidence that we have four recognized tribes now in which letters similar to Jena were sent to these groups and these people are currently being served.

The **Chairman**. In your opinion, this is not a restoration bill because we did not take away the recognition?

Mr. **Shapard**. It is a restoration bill if you talk about an administrative termination. It is not, I suppose from a legal purview, a restoration bill because Congress did not terminate these people, that is true. I think we are playing with semantics here. I think what we have got is a wrong, and I think Congress has the power to right that wrong. Whatever you want to call it, the facts will stand on their own, I believe.

The **Chairman**. History would seem to indicate that, notwithstanding the semantics or the technicalities, the man sitting at the witness table is a native American Indian, is that correct?

Mr. **Shapard**. There is no question about that, and his members are all native American Indians. In fact, they are on the first list that was prepared of Choctaw Indians after the removal period. This was prepared by the Dawes Commission. There was no other list prepared of the Eastern Choctaw Indians until that time. Of the people that were authorized recognition in 1938, some are still alive, and all their children are still alive, just about.

The **Chairman**. As a former official of the BIA, do you believe that Mr. Jackson as a recognized—recognized by me as a native American Indian—should receive benefits as such?

Mr. **Shapard**. Has received, or should receive?

The **Chairman**. Should receive.

Mr. **Shapard**. Absolutely yes, sir.

The **Chairman**. And is there a provision in the law that would permit that?

Mr. **Shapard**. Is there a provision in the law that would permit that?

The **Chairman**. At the present time are you aware of any provision?

Mr. **Shapard**. I am not a lawyer. I am aware of no provision that would exclude it especially in light of the 1938 letter.

The **Chairman**. You believe that the administrative process would be fruitless in this case?

Mr. **Shapard**. It would not be fruitless. They could get through the process, sir.

The **Chairman**. How long would it take?

Mr. **Shapard**. If the Branch of Acknowledgment was able to pick up their petition today and work on it, it would be 3 years before they would see the end of the process. And since they have an obvious deficiency to which to respond, it will take a couple of years for that, then they will have to be probably put in line. It could be as many as 5 years or more.

The **Chairman**. How large is this branch office?

Mr. **Shapard**. They have just been expanded, and I am not sure of what their current numbers are. When I was there they had 6 professionals, and a Branch Chief, and a secretary, and then a couple of other professionals for claims work.

The **Chairman**. It takes 5 years?

Mr. **Shapard**. Yes, sir.

The **Chairman**. We are supposed to be very slow in the Congress, but I hope not that slow. [Laughter.]

Mr. **Shapard**. I would like to comment that I think the staff is doing a very professional job there. There is just so much detail involved, they are so behind, and there is so much other work that is laid on the staff, and that accounts for it to some extent.

The **Chairman**. I thank you very much, Mr. Shapard, and Mr. Jackson. I can assure you that I will, in the strongest terms, recommend to my colleagues that something be done here to rectify this case.

Mr. **Jackson**. Thank you very much, Senator. My great-grandfather fought with this BIA in 1902, and then my grandfather fought with them in 1938 over this, and here I am coming to you again. I hope that my grandkids do not have to come up here and ask for it one more time.

The **Chairman**. Let me guarantee you that it will not happen.

Mr. **Jackson**. Thank you, sir.

The **Chairman**. I thank you very much.

Mr. **Shapard**. Thank you.

The **Chairman**. And now we have a second panel to provide testimony on S. 1413, the Aroostook Band of Micmacs Settlement. Ms. Mary Philbrook, president of the Aroostook Band of Micmacs, Maine, Mr. Harald Prins, ethnohistorian, Maine accompanied by Mr. Jack Campisi, anthropologist, Massachusetts, Ms. Nan Heald, attorney, Pine Legal Services, Maine, and Mr. Alvin Morrison, New York.

Before proceeding, I have statements by Hon. George J. Mitchell, senior Senator, and Hon. William Cohen, both Senators of Maine, without objection their statements will be made part of the record.

[Prepared statements of Senators Mitchell and Cohen appear in appendix.]

The **Chairman**. And further I have a statement of Senator John McCain the vice chairman of this committee, and his statement will be placed in the record.

[Prepared statement of Senator McCain appears in appendix.]

The **Chairman**. Shall I call on Ms. Philbrook first?

STATEMENT OF MARY PHILBROOK, PRESIDENT, AROOSTOOK BAND OF MICMACS, PRESQUE ISLE, ME

Ms. **Philbrook**. Thank you, Mr. Chairman.

Mr. Chairman, members of the committee, my name is Mary Philbrook and I am the elected tribal leader of the Aroostook Band of Micmacs. I am here today to speak in support of S. 1413 the Aroostook Band of Micmacs Settlement Act on behalf of our people.

I would like to introduce the other members of the band who have traveled to Washington with me today: Wilfred Sanipass who is the vice president, Mary Shaw who represents the elders council, and David Sanipass who works with Micmac youth. They have prepared statements of support that will be submitted and included in the record.

I would like to thank Senator George Mitchell and Senator William Cohen for their joint sponsorship of this settlement bill. We are very grateful to the entire Maine delegation for supporting this legislation as a fair settlement of our claims. Those claims result from our band's omission from the comprehensive Maine Indian Claims Settlement Act in 1980.

Our band currently has 482 members, most of whom are living in Aroostook County, Maine. Aroostook County is in the northeast corner of Maine. The St. John River separates Aroostook County, Maine from the province of New Brunswick, Canada. While we do not have a reservation, most band members live within a 20-mile radius of our tribal headquarters which are in Presque Isle.

The band is governed by a 9-person tribal council, each of whom serves a 2-year term. We do not have a tribal constitution; our bylaws are our governing document.

We operate a small office in Presque Isle. We use the band office mostly as a referral service to programs that we cannot currently offer our members. We operate a "Basket Bank" cooperative for Micmac craftspeople. Our baskets are well-known and sold all over the United States. Using volunteer help from the Micmac community, we also produce a newsletter and provide some youth programs.

Most people have heard about the Maine Indian Claims Settlement Act, which settled the claims of the Passamaquoddy, Penobscot, and Maliseet Tribes to land in Maine. That Act became law in 1980, and gave those tribes a total of $81.5 million in compensation. The Act also spelled out the future relationship between the U.S. Government, the State of Maine, and all of the Indian tribes in

Maine, including the Micmacs even though we had not been a part of the negotiations.

Even though the whole point of the 1980 Settlement Act was to fairly and honorably resolve the claims of Maine's Indian tribes, it treated Micmacs unfairly. We lost our right to claim title to aboriginal lands in Maine because of it, but we received no money for that loss. We lost the right to have tribal land taken in trust on our behalf, even though many Federal programs require trust lands. Our ability to become recognized as a tribe in the future by the United States was threatened by language in the 1980 Act. We received no services or programs as a result of the Settlement passing and we lost all the State services and programs we had been receiving from the Maine Department of Indian Affairs, when that agency closed its door just 4 months after the 1980 Settlement became law.

All of these things were wrong, although no one intended to hurt us by passage of the 1980 Settlement Act. We were just overlooked. And it has taken us 10 years to reach a point where we can today ask you to address that wrong and to correct it.

In those 10 years, we have gathered the historical research on Micmacs in Maine which was not available back then. We have formed a good strong organization with experienced tribal leadership and advice from our elders. And we have worked hard to document every aspect of our case.

This bill which you are considering today is not a recognition bill; it is a fair settlement of all our claims resulting from our omission from the Maine Indian Claims Settlement Act of 1980.

To reach this point, we needed and received support from every member of the Maine Congressional Delegation, the Penobscot and Passamaquoddy Tribe, the Houlton Band of Maliseet Indians, the Maine Legislature, State Attorney General James Tierney, towns cities, civic, and religious organizations all over the State of Maine.

There has been a big change in public attitude about Indian settlement bills in Maine over the past 10 years; the support we have received is a real tribute to the good results of the 1980 settlement for everyone else in Maine. Most people in Maine never knew that Micmacs were left out of the 1980 Settlement Act; we have welcomed the enthusiastic efforts of groups like S.O.S. Micmac from Winthrop High School in Winthrop, ME, to correct this injustice.

Today we hope to see the harsh consequences of the band's omission from the 1980 Settlement Act reversed. Passage of the Aroostook Band of Micmacs Settlement Act will insure that band members benefit from the full range of Federal benefits and programs offered to individuals because of their special status as Indians.

We have sought to guarantee those benefits through other procedures, specifically in 1987 by filing petitions for the 1934 Indian Reorganization Act. But, in over 3 years, the BIA has never acted on those petitions.

Passage of the Micmac Settlement Bill will also restore our band to parity with the Houlton Band of Maliseet Indians. The history of the two bands in Maine was very similar until 1980, when the Houlton Band was included in the Settlement Act and the Aroostook Band was not.

At that time, the Houlton Band was better organized and their historical presence in Maine was easier to document. If there had been more time to assemble our case, I believe that the Aroostook Band would also have been included in the settlement, but time ran out before that happened. Now, 10 years later, we are asking Congress to provide us with tribal land acquisition funds and benefits, and to be treated equally with the Houlton Band.

We hope that Congress will correct this injustice through passage of the Micmac Settlement Bill. Thank you.

[Prepared statement of Ms. Philbrook appears in appendix.]

The CHAIRMAN. All right. Thank you very much, Madame Chairperson. And may I now call upon Mr. Harald Prins.

STATEMENT OF HARALD PRINS, ETHNOHISTORIAN, BOWDOIN COLLEGE, ME, ACCOMPANIED BY JACK CAMPISI, ANTHROPOLOGIST, WELLESLEY COLLEGE, MA; NAN HEALD, ATTORNEY, PINE LEGAL SERVICES, AUGUSTA, ME; AND ALVIN MORRISON, STATE UNIVERSITY OF NEW YORK, FREDONIA, NY

Mr. PRINS. Mr. Chairman, it is an honor to testify on behalf of the Aroostook Band of Micmac Indians. I have worked with them for the last 9 years doing research on the historical presence of this group in northern Maine. They are the only tribal group in Maine which is currently without land base, and they still live very much like their ancestors did during the past 500 years, as much as we can document, in make-shift dwellings. Today, they are, for the most part, still leading a rather transient way of life due to the fact that they do not have a tribal land base of their own.

As a band they form part of the larger Micmac Nation which is divided into 29 bands, all of whom are located in Canada except for the band which is in northern Maine, and this is the Aroostook Band of Micmac Indians.

Their homeland is located in the northern St. John River drainage area and the St. John River itself forms the northeastern boundary between Canada and the United States. In that area they have roamed as hunters, gatherers, and fishermen, since time immemorial, together with their neighbors, the Maliseet people. According to oral traditions and folklore, as well as historical records which I have uncovered in the past 9 years, and on the basis of place names in this region, there is very sound evidence of Micmac historical presence in this area.

Until the 19th Century, however, this woodland area remained uncharted wilderness, and as a result we know relatively little about the historical data preceding the 19th century. But the Micmac presence on the coast of Maine, which has been known to Europeans who left written records, has been very well documented since the early 17th century. For instance, one of the very first records by English explorers on the coast of Maine dates from 1602. The very first boat they encountered was a group of Micmac Indian tradespeople in southern Maine in the Sacco River area.

Their highly mobile way of life as hunters, gatherers, and fishermen has resulted in a residental and social structure which is much less sedentary and much less stable than that of their agricultural based neighbors to the south. As a result, their political structure has been more informal and much more flexible. It also has resulted in a generally less rigid life form. For instance, their traditional leadership has been in the hands of informally selected leaders from the largest kin-groups in the area.

They joined with their neighbors of the Penobscot, Passamaquoddy, and Maliseet Nations to form the Wabanaki Confederacy since the 17th century. As members of this Wabanaki Confederacy, the three other members of which have gained Federal recognition 10 years ago, the Micmac people have been signers of treaties with the government of Massachusetts which had, until 1820, jurisdiction over what is now the State of Maine. In total they were participants in at least 10 treaties before the American Revolution.

General George Washington asked the Micmac people to support the American Freedom Fighters in 1775 against oppression from abroad. The Micmacs were one of the first to rally to the cause of the American Revolutionary Army. In 1776 a tribal delegation of Micmac and Maliseet people came to Massachusetts and signed there the Treaty of Friendship in Watertown, which is just west of Boston.

The Governor of Massachusetts, Governor James Bowdoin, was at the time the president of the Revolutionary Council in Massachusetts, declared—and this has been documented—that "the United States now form a long and strong chain and it is made longer and stronger by our brethren of the Maliseet and Micmac Tribes joining with us; and may the Almighty God never suffer this chain to be broken." Also that "the friendship now established might continue as long as the sun and moon shall endure." Both parties, including the Micmac people, agreed with those proclamations. Then a toast was made.

Following the Revolution, their services, were no longer necessary in defense of the northeastern boundary of the United States, specifically the region which is now northeastern Maine. By then the Micmac people, who were camping out in the woods of northeastern Maine, repeatedly asked the authorities in the United States to fulfill the promises made to them during the war. This request concerned specifically a guarantee of their native homeland.

The final petition came when they met at Passamaquoddy Bay in eastern Maine where they were again rebuked. Yet, as allies they had sacrificed their personal lives in the struggle for American liberty. Following the Treaty of Paris of 1783, they were basically left without recourse.

It should be noted, however, that the international boundary, which sliced through their traditional home range, was not agreed upon until the Webster Ashburton Treaty of 1842. But even then the Micmac people remained in their homeland as hunters and gatherers roaming within what was their aboriginal range.

As members of the Wabanaki confederacy, they continued to meet with their allies in Maine until the 1860's. But, as a political confederacy of allied tribes, their political power had been diminished to such an extent that it seemed fruitless to meet any further. It was not until 1977 when the Maine Indian tribes, who were jointly engaged in a struggle for native rights, specifically the Penobscot, Passamaquoddy, and Maliseet, revived the Wabanaki Confederacy at Indian Island in the Penobscot River.

When the first white townships were established in northern Maine, the situation in northern Maine was fundamentally not that different from the situation in the territories west of the Mississippi River. As such, the region's cultural history remains undocumented in terms of the locations of specific campsites of native people until that period. Finally, with the very rapid decline of their hunting and fishing territories remaining in that area, Micmac Indian people were forced to settle down in a string of border towns in northern Maine, which was within their traditional home range. And that is where they remain today, subsisting usually on the lowest rung of social order in northern Maine: They have been discriminated, they have been repressed economically, and their life in general has been very difficult. To me, as an anthropologist from the Netherlands, it has been a remarkable experience to see these people persist as a native community united in their struggle for cultural survival.

In closing, therefore, I would like to make a statement that the situation, in terms of aboriginal rights, of the Micmac people, is not fundamentally different at all from that of their neighbors, the Maliseet people, who did gain recognition in 1980 from the U.S. Government because they have demonstrated historical ties to the homeland in which they currently reside, which is the drainage area of the St. John River.

Their close cultural and political relationship to their fellow Wabanaki Tribes in the area is still very present. Moreover, they have very well documented participation in the signing of the treaties which I mentioned before.

Also the fact that they were signatories to the 1776 Friendship Treaty with the United States in the struggle for liberty, which was never honored in terms of their commitment to them on the part of the United States, is also clearly documented.

Moreover, they have demonstrated military support in eastern Maine during the American Revolutionary War. We even know the names of the Micmac people who participated in this war. As an anthropologist I was particularly interested in the demonstration of joint-use territoriality in the St. John River area, and in the fact that they were able to endure as an active native community in the woods of northern Maine until today. And as such, I believe that a settlement bill on behalf of the Aroostook Band of Micmacs is nothing but fair. Thank you very much.

[Prepared statement of Mr. Prins appears in appendix.]

The **Chairman**. Thank you.

Mr. Campisi, Ms. Heald, or Mr. Morrison, do you have any statements that you would like to submit?

Ms. **Heald**. Mr. Chairman, we have prepared testimony on behalf of both Professor Morrison and Professor Campisi which we would like to have included in the record, together with their reports.

The **Chairman**. Without objection it will be so done.

[Prepared statements of Messrs. Morrison and Campisi appear in appendix.]

The **Chairman**. When the Maine Indian Claims Settlement Act was under consideration in 1980, I was then a member of this committee and I recall that there was a great deal of publicity, not just in the State of Maine, but throughout this Nation. It was one of the major land claims acts considered by the Congress up until then. Were either the Micmac Band or the Houlton Band of the Maliseets a party to the litigation against the State of Maine?

Ms. **Heald**. No; they were not, Mr. Chairman.

The **Chairman**. Now ultimately the Houlton Band got included in the bill. Why is it that the Micmac Band did not assert any claim at that time? Was there any special reason?

Ms. **Heald**. Mr. Chairman, to understand that, you have to appreciate that for many years the Maliseets and the Micmacs were allied in the same organization, the Association of Aroostook Indians, and that organization advocated on behalf of both groups with respect to both the State and Federal Government. They had not documented the history of either tribe until moneys for that research became available to the Administration for native Americans late in 1978. There was limited funding and, as I am sure you remember, very limited time to conduct that research before the negotiations for the settlement drew to a close. There simply was not time to present a case for both the Micmacs and the Maliseets. The research was just produced for the Maliseets and that is what allowed them to be included in the settlement.

It is also my understanding that the Micmacs and the Maliseets did not fully appreciate—the people that were living in Aroostook County—the significance of the Settlement Act and what it would mean to them in the future. Many Micmacs, I believe, did not know that they were not included in the settlement, and did not find that out for several months after the act had become Law.

The **Chairman**. That is what our research would indicate, that it was inadvertency at best that caused this unfortunate mishandling.

Does the Micmac Tribe, at present, maintain a membership roll?

Ms. **Philbrook**. Yes; we do, Mr. Chairman.

The **Chairman**. How many members do you have?

Ms. **Philbrook**. We have approximately 482 members.

The **Chairman**. What is the criteria for membership or citizenship?

Ms. **Philbrook**. For membership—a member is required to fill out and sign an affidavit and have it notarized. A family history chart has to be filled out. Also they have to be a resident of Aroostook County. Then it goes to the council and the council decides if that person becomes a member or not.

The **Chairman**. Are there any blood quantum requirements?

Ms. **Philbrook**. Not at this present time.

The **Chairman**. Are you receiving any benefits from the State of Maine or from the Federal Government?

Ms. **Philbrook**. We received fishing and hunting licenses from the State.

The **Chairman**. But no benefits at all from the Federal Government?

Ms. **Philbrook**. We currently operate under the ANA funding at this time.

The CHAIRMAN. Dr. Morrison, I gather that you were working with the State of Maine at the time that the settlement bill was introduced in 1980. Did you have any discussions that included the Micmac in that bill?

Mr. MORRISON. Mr. Chairman, the answer to that is somewhat complex. At the time that the Settlement Act actually came up in 1980, my services were apparently no longer needed by the State. I had not had any direct contact with them for some months.

The CHAIRMAN. In the process of developing that bill, were the Micmacs ever discussed?

Mr. MORRISON. Informally. Jim Wherry who later presented the case for the Maliseets, and I informally discussed this between ourselves. As far as actual assignments by the State of Maine for their research, no, this was never formally done, although we did have considerable concern over the problems with the border between the United States and Canada—not only the border that was settled in the 1790's finally, but the border that was settled in the 1840's finally. That's been a very convoluted issue in that area. So we did have some considerable private concerns for this that you're asking about, but nothing actually assigned to us by the State of Maine to research.

I was quite surprised and pleased that the Maliseets were included in the final Settlement. I was also disappointed that the Micmacs were not included also. If we referred to them at all, we usually referred to them as the Aroostook Indians, collectively, both Maliseet and Micmac.

The CHAIRMAN. It would appear that a grave injustice has resulted from some unfortunate inadvertency and I gather that the State of Maine recognizes this and a measure has been passed and signed into law that would implement whatever settlement is passed. Is that correct?

Ms. PHILBROOK. Yes, Mr. Chairman; Governor McKernan signed the State Recognition Bill in May 1989.

The CHAIRMAN. I have also been advised that the Attorney General approves this measure.

Ms. PHILBROOK. Yes, sir; he is been very supportive in our efforts.

The CHAIRMAN. So the legislature of Maine, the Governor of Maine, the Attorney General of Maine, the two Senators, and your congressional delegation all approve this?

Ms. PHILBROOK. Yes, Mr. Chairman.

The CHAIRMAN. Does anyone oppose it?

Ms. PHILBROOK. You threw me on that one.

The CHAIRMAN. I just noticed the most distinguished member of this body—his statement has already been made part of the record—but I want him to come forward. it is not always that I have the opportunity to have him sitting in front of me.

Senator Cohen, it is a pleasure to have you with us. As all of us are aware, Senator Cohen played a major role in sponsoring and managing the Maine Settlement Act, and I think your testimony will hold a great weight in the committee's deliberations.

STATEMENT OF HON. WILLIAM S. COHEN, U.S. SENATOR FROM MAINE

Senator COHEN. Thank you very much, Mr. Chairman.

I raised my hand solely to get your attention because I know you focused on the testimonies being given by those at the table.

I cannot think of a greater inequity that has been done here. At the time that we fashioned the great settlement there were only three major groups in mind, the Penobscot, the Passamaquoddy, and the Maliseet, but it was the assumption that the Micmacs would be included and represented by the Maliseet. We now have the unfortunate situation, the anomalous situation, where this band might not be able to get recognition in the way in which the language is now interpreted, namely that they could not seek Federal recognition because it was part of the condition that all of the claims be extinguished. Otherwise the State would not have accepted the settlement.

So unless this inequity is corrected, the band could in fact be precluded from having access to any of the Federal programs which are so desperately needed.

They are not highly organized. They tend to be in the remote area of the State. They do not have access to the more active "lobbying" groups as such. And I think that fairness and equity really dictate that they be allowed to be recognized within the Land Claim Settlement.

I know how sensitive you are to these issues, Mr. Chairman. I have had the grace and privilege of having Peter Taylor advise me, in much the same way as he is sitting beside you and perhaps advising you in these matters, and it was of great importance to me when I sat behind that podium.

The CHAIRMAN. I thank you very much, Senator Cohen.

I can assure you that I will do my utmost to see that this inequity is rectified.

This is one of those cases where it makes me as chairman of the committee very happy to see everyone supporting something here. I think that the record should show that we have with us two high school students who are non-Indians, and they wanted to testify on behalf of their student body. I would like to recognize them at this time, Ms. Becca Yturregui and Mr. Reed Dyer, and I believe their school teacher is here, Ms. Linda McKey.

[Applause.]

The CHAIRMAN. It is always heartwarming to see non-Indians come forth from their communities in support of their Indian brothers and sisters, and I gather that you have spent a year raising money to support the Micmacs, and you have testified before the State legislature on their behalf. Is that correct?

Ms. YTURREGUI. Yes; that is correct.

The CHAIRMAN. I just want to acknowledge your contribution to this effort and congratulate you and commend you for your civic spirit. I am certain that the Micmacs appreciate it very much.

Ms. YTURREGUI. Thank you.

The CHAIRMAN. Would you like to say something?

STATEMENT OF BECCA YTURREGUI, STUDENT, WINTHROP HIGH SCHOOL, MAINE

Ms. YTURREGUI. We are greatly honored to be here to demonstrate publicly our commitment to some of the first great Americans, the Micmacs. Reed and I are co-chairpersons of Students Organized to Support Micmacs, or S.O.S. Micmacs, an organization at Winthrop High School in Winthrop, ME.

We chose the name "S.O.S. Micmacs" because we wanted to send out an urgent message to people in the State of Maine and of this entire country that this band of native Americans desperately needs our help.

Last year as 11th graders our eyes were opened by the shocking circumstances surrounding the Micmacs. We had been brought up by the images of Hollywood and third grade textbooks, and some of these images of the native Americans as either cruel barbarians, or noble savages, which were entirely wrong. These were just images, not realistic pictures.

What we discovered was that these native Americans whom we had glorified in elementary school, no more resembled today's native Americans than the Pilgrims resemble any of us here. The reality of their present-day condition shocked us. We could not ignore 95 percent high school drop-out rate. We could not ignore 75 percent unemployment rate. And we could not ignore 45 year life spans.

But the reality also saddened us. It saddened us because the harmonious culture of these once proud Indians was almost completely gone. As we learned more, it angered us too, because we knew that at least one injustice could be rectified, their exclusion from the 1980 Maine Indian Claims Settlement Act. That is why we are here.

STATEMENT OF REED DYER, STUDENT, WINTHROP HIGH SCHOOL, MAINE

Mr. DYER. We have come all the way from Winthrop, Maine to represent almost the entire student body of Winthrop High School. We are extremely proud of what these three other Maine tribes, the Penobscots, Passamaquoddy, and the Maliseets have achieved thanks to the 1980 Act.

But the Micmacs were left out of this, despite the documented fact that they have lived alongside these other three bands. As far as the record goes, the Micmac Indians do not exist. They are not recognized as American Indians. They do deserve the same recognition, benefits and sense of renewed pride that the other Indian tribes have.

When we learned about the Micmacs plight, we knew that we had to do something, for their deplorable situation is not a concern just to the Micmacs, not a concern just to the Government, but a concern to all of us.

As the Rev. Martin Luther King, Jr. once said, "An injustice anywhere, is a threat to justice everywhere." Today you have an opportunity to make sure that this injustice committed 10 years ago is rectified. We realize that this bill may seem insignificant and unimportant when compared to many other important issues of today, but it is not.

Over the last year, we at Winthrop High School have grown very close to the Micmacs. We have had them in our homes and classrooms. We have learned about their basket making techniques and heard their stories. They are our friends. But we fear that unless this bill is passed, their great pride, history, and culture will be lost forever.

Thank you.

[Prepared statement of Mr. Dyer and Ms. Yturregui appear in appendix.]

The CHAIRMAN. I have been chairman of this committee now for about 3 years and I have had the privilege of receiving testimony from at least 1,000 witnesses. Yours are the most eloquent.

Mr. DYER. Thank you, sir.

[Applause.]

The CHAIRMAN. Well, I would say that as a result of Becca's and Reed's testimony this committee is going to act upon the bill.

[Applause.]

Ms. YTURREGUI. Thank you very much.

Ms. PHILBROOK. Thank you.

The CHAIRMAN. Well, I thank all of you and now we have other tribes that are seeking recognition.

Becca and Reed will you thank your student body?

Mr. DYER. We will. Thank you very much.

The CHAIRMAN. We hope that other student bodies throughout this land will look upon you for leadership because that is what we need in this land.

Ms. YTURREGUI. Thank you very much.

The CHAIRMAN. Thank you all of you.

And now the third panel to consider S. 381, the Mowa Band of Choctaw Indian Recognition Act. We have with us the president of the Mowa Band of Choctaws of Alabama, Mr. Framon Weaver who will be accompanied by Mr. Doug McCoy, attorney, Mobile, AL, but first I would like to recognize my distinguished colleague.

I would like to advise the members of the Mowa Band that Senator Richard Shelby has been calling upon me almost on a daily basis—I am not exaggerating—to make certain that this measure is up before us. If you want to thank anyone in the U.S. Senate for this hearing, you are sitting next to him right there. I would like to now recognize Senator Richard Shelby, the author of this measure.

Mr. Shelby.

STATEMENT OF HON. RICHARD C. SHELBY, U.S. SENATOR FROM ALABAMA

Senator SHELBY. Mr. Chairman, thank you for your kind remarks. I hope that I have not jeopardized this group, the Mowa Choctaw group by petitioning you in earnest for the fourth straight year since I have been in the U.S. Senate on their behalf.

Mr. Chairman, as I have told you from time to time, I thought, from my examinations of their plight, that they had merit on their side. I know that it takes a long time and a lot of work, but sometimes when there has been injustice over many years there comes their day in court, or their day before the committee, and this is their day before the committee. And I commend you for giving us this hearing today.

Mr. Chairman, I will be brief because we're currently meeting in the Banking Committee on a nomination at the present when I was sent up. But I want to commend you again and ask you and your staff and this committee to give this group every possible benefit of the doubt because they're long-suffering, but more than that, they're long-deserving. I believe the record will reflect that, and I know you have been sensitive to these issues over many years.

If there is one group in America, or groups, or multi-groups that have been overlooked and forgotten at times it is the American Indians, and this group is one of them. I thank you for your consideration and I hope and pray that we are going to get some justice here. Thank you.

[Prepared statement of Senator Shelby appears in appendix.]

The CHAIRMAN. I can assure you that we will not only give your Mowa Indians a day in court and a day in the committee, we will lean over backward.

Senator SHELBY. Thank you. I believe that.

The CHAIRMAN. Thank you very much, and may I now call on Chairman Weaver?

STATEMENT OF FRAMON WEAVER, CHAIRMAN, MOWA BAND OF CHOCTAW, McINTOSH, AL, ACCOMPANIED BY DOUG McCOY, ATTORNEY, MOBILE, AL

Mr. WEAVER. Thank you very much, Mr. Chairman.

I am Framon Weaver, tribal chairman of the Mowa Band of Choctaw Indians. The State of Alabama acknowledged the Mowa Band of Choctaw Indians as an Indian tribe in 1979. It is time for the Federal Government to acknowledge our tribal status.

The Treaty of Dancing Rabbit Creek guaranteed our right to remain in Alabama and still retain our citizenship in the Choctaw Nation. We have remained a tribe since the 1830 treaty was signed and still live in the same geographical area in which our ancestors resided some 200 years ago. We have continually maintained our tribal status as an Indian tribe throughout this time.

In April 1988, our people filed a fully documented petition for Federal acknowledgment. Our tribe has spent nearly 10 years and has endured much financial stress while trying to finance the necessary research documentation for our tribal petition.

In February 1990 we received a letter of obvious deficiencies. It has taken nearly 2 years just to get this letter. How much longer will it take to get a full review of our petition? It may take another 10 years or more before we get a final decision from the Department.

We feel this legislation is necessary, given the long drawn out acknowledgment process and the very difficult criteria. Many southern tribes find it nearly impossible to meet this criteria.

We are asking that Congress exercise the authority given by the U.S. Constitution and thus give us tribal status. We are asking that Congress pass the bill introduced by Senator Shelby and Congressman Sonny Callahan. We are asking that our Choctaw citizenship guaranteed by the Treaty of Dancing Rabbit Creek be honored and then recognized by Congress.

Nearly 160 years has passed since the Treaty of Dancing Rabbit Creek was signed. Many of the terms of this treaty which permitted our people to remain in Alabama have been overlooked or ignored by the Department of the Interior and by Congress. I think our unique circumstances justify immediate action by Congress.

Genealogical research conducted in connection with the Mowa Choctaw petition for tribal recognition positively establishes the continuity of the south Alabama Choctaw Tribe that is today the Mowa Choctaws, from the period of the first European contact through the present day. In addition, research of records and publications establishes that this tribe has been continuously recognized in its community, by the State of Alabama, and even by the Federal Government, from historical times to the present. Oral histories taken from the elders of the Mowa Choctaw establish its operation as a continuous self-governing entity.

From the earliest times to the present, a territorial and economic organization of the Mowa Choctaw has rested on a dense network of kinship ties. Nearly 10 generations ago, the Mowa Choctaw progenitors and their immediate descendants established the basis for an enduring kin-based community organization—a structure of relationships yielding a quality and density of social ties that are generically tribal in character. The Mowa Choctaws have consistently maintained continuity in their tribal relations.

There has also been continuity of leadership throughout Mowa Choctaw history, stretching back through the 19th and into the 18th centuries. The leaders of the present descend directly from the leaders of the past. The Mowa Choctaw tribal leaders settle disputes, allot punishment, and give advice when asked. Outside timber contractors, and other contractors, know, and knew then, and seek out the recognized tribal leaders for making business arrangements relating to the Mowa Choctaws. Taxes have been levied by Mowa Choctaw leaders to support Mowa Choctaw Community Schools.

Mowa Choctaw social patterns are characteristically Indian. Despite tribal pressures and racial turbulence in the 19th century, the Mowa Choctaws have consistently maintained that they are Indians. Clearly, the Mowa Choctaws constitute a distinct community within the region of southwest Alabama.

The present day Mowa Choctaw community has its own churches as well as its own schools. The churches date back to the time of the establishment of the Kunsly and Kun-shak communities, specifically to the mother churches of those communities, Reed Chapel and Aldersgate. The Mowa Choctaws have never relinquished control of their churches, and, indeed, during the 1930's established the Indian Association of Churches.

The earliest Mowa Choctaw School was the Byrd Academy established in the 1820s and operated from a home. Prior to desegregation there were 7 Indian schools, 3 in Mobile and 4 in Washington County, exclusively serving the Mowa Choctaw settlements. The schools located in the 2 larger settlement areas are still in operation. Their continuation was a compromise exception to a desegregation order related to southwest Alabama which closed the other

Mowa Choctaw schools in the early 1970's. After negotiations between tribal leaders and county school officials following this desegregation order, these two schools were permitted to remain in operation. This concession was granted explicitly based on the recognition that those schools served an Indian community. The students, teachers, and administrative individuals in these two schools are all tribal members, and there is much parental involvement.

Mr. Chairman, at this time I would like to say that because of time constraints we were unable to get as many to testify as we had originally planned, and I would like to have the opportunity to submit additional testimony at a later date. Also, if it is all right, I would like to have all my tribal members present stand.

The **Chairman**. Certainly, please do.

Mr. **Weaver**. Thank you.

[Prepared statement of Mr. Weaver appears in appendix.]

The **Chairman**. You have got a large backup group there.

Mr. **Weaver**. Thank you, Mr. Chairman. At this time I would like to hear a few words from our attorney, Mr. Doug McCoy.

The **Chairman**. Mr. McCoy.

STATEMENT OF DOUG McCOY, ATTORNEY, MOBILE, AL

Mr. **McCoy**. In addition to it being my privilege to be here to represent the Mowa Choctaws, I am presently a law partner of Jack Edwards, your former colleague, Congressman from the First District of Alabama for over 20 years. The Mowa Choctaws were a cause of interest to Jack for the entire time of his congressional term. He became familiar with them, basically, at the beginning of his congressional term and his interest in the band, in seeing that they gain the recognition of their Federal rights as an Indian tribe, continues to this day.

I join former Congressman Edwards in thanking Senator Shelby, Senator Heflin, and Congressman Callahan for their support of the Mowa Choctaws and the continuation of Mr. Edwards efforts on their behalf.

I also want to join Mr. Edwards in thanking you for the opportunity of this hearing. It has been apparent from my presence in the audience today the expertise and preparation that you bring to this hearing which gives all of us a very good feeling about our opportunities before this committee because we feel that we've prepared very hard, and certainly the Mowa Choctaws have worked very hard and very long for their moment today. The presence of the tribal members here is just an indication of the importance of this event in their history. They feel very strongly about their qualifications for tribal recognition. We appreciate the opportunity that you've given them.

The tribal members have stood, but I want to recognize some individuals among the support group that is with us today. Senator, may I say, we have submitted I believe 10 different prepared statements in a notebook to the committee prior to this hearing, and I would ask that they, in addition to whatever else we submit after this time, be made a part of the record of this proceeding.

The **Chairman**. Without objection so ordered.

[Prepared statement of Mr. McCoy and other materials referred to appear in appendix.]

Mr. McCOY. Thank you, Senator.

In addition to Mr. Weaver and myself, we have a witness today, Jacqueline Matte, who has been the tribal historian for purposes of preparing for this hearing and for purposes of preparing for their BIA petition. We also have Mr. Russell Baker who represents the Alabama Commission on Indian Affairs. We have John Rivers who is a member of the tribe and also an attorney, Peter Rivers who is a tribal member and a genealogist, and others who have submitted testimonies that appear in the materials that we've submitted including Leon Taylor and Gallasneed Weaver.

The tribal chairman, Framon Weaver, has addressed, I think, some of the issues of the continuity of the leadership and the community aspects of the tribe. My focus will be more on the general history of the tribe and in particular the aspects of that history that we feel warrant consideration by this committee and recognition by the Congress as opposed to the requirement of the administrative process.

We contend that perhaps a more appropriate name for the legislation that's before this committee today would be the Mowa Choctaw Reaffirmation Act because it is our position that the Mowa Choctaws are recognized, have been recognized, have never been unrecognized—if that is a word—and therefore continue to be a Federally recognized tribe to this date. The problem with their status is that their recognition has never been carried forward by the Congress or the BIA.

The Federal recognition of the Mowa Choctaw Tribe is documented in a number of treaties which culminate in the Treaty of 1830, a treaty upon which the Mowa Choctaws put great faith. That treaty is known as the Treaty of Dancing Rabbit Creek. The Treaty of Dancing Rabbit Creek was the last in a series of treaties under which the Choctaws of Mississippi territory, and let me clarify that the Mississippi territory included southern Alabama, ceded the last of their lands. Among the lands ceded is the land on which the tribe exists today.

Under the Treaty of 1830, however, by which the Choctaws ceded their lands, article XIV preserves for them the right, for those tribal members who desired to stay in their native homelands to do so, and by doing so, not to lose their tribal status. Article XIV of the Treaty of Dancing Rabbit Creek provides specifically that,

> Each Choctaw head of a family being desirous to remain shall be permitted to do so. Persons who claim under this article shall not lose the privilege of a Choctaw citizen.

Ancestors of the Mowa Choctaws, which have been traced back by genealogists, were signatories and parties to this treaty.

The historical accounts of this time talk about what were known as the Six Towns Choctaws—in the Mississippi territory there were six towns of Choctaws, actually six different tribes of the Choctaw Nation. The southern most tribe was the Yowani community, and it is the Yowani community from which the Mowa Choctaw present day tribe directly descends.

As I said, this treaty affords the Choctaws the right to remain in the southern Alabama territory. The tribe which exists today are those members who have exercised that right. That right has never been rescinded by Congress, never been rescinded administratively, and we contend that the only thing lacking is Congress' process to extend the rights that are afforded specifically by this treaty. That is why we believe that this committee, instead of the BIA, has the authority and an obligation to recognize the Mowa Choctaws. Treaties are products of Congress and Congress ought to construe treaties and apply treaties. This is strictly a matter of treaty, and Congress ought to address it and not the BIA.

In addition, unfortunately, there are a series of historical events which are directly related to Congress, which in fact harmed the Choctaws in their efforts to seek recognition and to seek the rights afforded by this Act. Immediately after the Treaty of Dancing Rabbit Creek, Congress sent its agent, Colonel William Ward, into the Choctaw territory to make a list of those Choctaws that intended to remain and claim under this treaty. Many of the Mowa ancestors attempted to enroll under Colonel Ward, but Colonel Ward has been historically recognized as being intemperate and incompetent, and he refused to enroll the Choctaws. When I say that he has been historically recognized, in 1890 there was a Dawes Commission, as you are probably well aware, took testimony from a number of Indians from the Mississippi territory. It specifically recognized the incompetence of Colonel Ward. Pursuant to that recognition, Congress made the decision at that time to enroll all the Choctaws that would have claimed under article XIV and would have been entitled to claim but for the fact that Colonel Ward, Congress' agent, failed to carry out his duties.

Once the Dawes Commission made that decision, Congress became aware that there were a tremendous number of Choctaws who were entitled to claim. It therefore arbitrarily decided that only 100 percent fullblood Choctaws were entitled to claim under the treaty, and the Dawes Commission were only willing to enroll 100 percent fullblood Choctaws. That standard has never been applied in any other recognition process.

The Yowani Choctaws, from which we descended in particular, were close to Mobile which is the second oldest city in the Nation—settled by the French, settled by the Spanish—and the Yowani Choctaws always had a great deal of involvement in the community of the European invaders. There was intermarriage, there were Europeans who took Indian wives, and the present day Mowa Choctaws are descendants of Indians, but also of a lot of the Europeans that came over. They have, however, continuously, since that time, maintained their Indian habits, maintained their Indian community, and have been recognized by the communities that surround them as Indians.

Again, we focus on the Treaty of Dancing Rabbit Creek for purposes of the reason why this committee, as opposed to the BIA, ought to address this matter. However, it is not the only evidence for Federal recognition. It is one of the 7 criteria for tribal recognition.

I will address your attention, Mr. Chairman, to the testimony of Jacqueline Matte which will be submitted in support of this criteria. Ms. Matte's testimony lists the 7 criteria for Federal recognition as an Indian tribe and breaks the evidence down, accordingly, into the 7 criteria.

As to the first, Federal identification by Federal authorities, the Mowa Choctaw ancestors were parties to treaties in 1801, 1802, 1803, 1805, 1814, and 1815 and were reflected on the rolls of Indians who fought in support of the United States in the War of 1812. There was another treaty in 1816 to which Mowa ancestors were signatories, 1820 as well, and 1825. In 1830 there was the Treaty of Dancing Rabbit Creek. In 1831 through 1834 the interaction between the Federal Government and the Mowa Choctaws continued. Correspondence indicating this is in the record of the 23rd Congress that lists the names of Mowa ancestors. In 1844 a letter from the Commissioner of Indian Affairs reports that the Choctaws remain in the southeast, including south Alabama.

The record goes on and on. In 1852, 1853, 1856 a census of eastern Choctaws prepared by Douglas Cooper, U.S. Indian agent, contains Mowa ancestor Eli Tubbee who was Chief Tom Gibson. In 1811 there was a Court of Claims case where testimony of Mowa Choctaw ancestors was taken. Perhaps one of the most interesting pieces of documentation is an 1852 letter to President Millard Fillmore, signed by four people who are documented ancestors to the present day Mowa Choctaw Tribe.

Again, these are only examples of the proof to support Mowa Federal recognition. I think that the proposed legislation that you have joined with Senator McCain to submit, allows a lapse of as much as 30 years tribal recognition evidence under certain circumstances. In this strictly documentation history, there is never a lapse of more than 5 or 6 years.

As part of the record today, we would also submit the series of documents that support this history.

The second criteria for Federal recognition of Indian tribes under the present regulatory scheme is recognition by State and local government. And again, if you will refer to pages 11 through 14 of Ms. Matte's testimony, she lists evidence of continuous State and local recognition, as well as records from churches and schools and local governments of Mowa Choctaw tribal recognition. Byrd Church, the first church of the Mowa Choctaws was established as early as 1800. In 1837 Choctaw Muster Rolls list Mowa ancestors Robert Jones, Pierre Juzan, and William Colbert. The names of the people who signed the treaties back in the early 1800's are carried through into the present day.

In Ms. Matte's testimony, she combines criteria 5 and 6 which is identification as an Indian entity by anthropologists, historians or scholars and repeated identification as an Indian entity in newspapers and books. Again, the examples provided by her list are only examples, and are by no means exclusive, but they provide some interesting, and I think unequivocal proof of the continuing existence of this tribe.

In 1831 the Mississippi Historical Society Publications reported the feelings of the Choctaws of the Six Towns who did not want to move West. And as I said, the reason that this tribe is here today, is because they include the Choctaws that did not want to move

West and were given the right to stay and to maintain their tribal identity by the Treaty of Dancing Rabbit Creek.

In 1897 the Daily Register of Mobile, Alabama, which is the predecessor of our present paper the Press Register, reported that Choctaws were frequently seen on the streets of Mobile and the Birmingham News reports the same type of thing.

The Mowa Choctaws are documented in their community, they are documented through Federal papers, through State papers, they have been recognized by the State of Alabama as an Indian tribe, they've been recognized—which is criteria 7—by other Indian groups as an Indian tribe. Gallasneed Weaver of the tribe has served as a representative to at least two national Indian organizations. In addition, tribal members have attended Indian schools clearly giving them recognition as Indians.

I have one last matter with respect to the problem of any administrative process which I would like to address. If this tribe is required to go before the BIA, the BIA may very well say,

> Well, immediately after the Treaty of Dancing Rabbit Creek Congress gave you the opportunity to enroll for the benefits provided by the Treaty of Dancing Rabbit Creek. They sent Colonel William Ward into your area to enroll you and you failed to do so.

We submit that our failure to do so is what is documented in the Dawes Commission hearings that Colonel Ward was an incompetent agent of the Congress.

In addition, they may say,

> Well, the Dawes Roll gave you your second opportunity to enroll and you failed to do so, and therefore, given these acts of Congress that you failed to comply with, we have no authority to recognize you.

It has been mentioned before that the problem with the Dawes Roll was that it required 100 percent Choctaw Indian blood, a criteria which has never, before or since, been applied in terms of recognition for Indian tribal status.

We therefore feel that only Congress can address the Mowa Choctaw situation. The Mowa Choctaws are here today after a long effort, much expense, and very limited resources. As indicated by their presence here today, they are a proud people and a people in which all of us can be proud. They have managed to buy back some of their ancient tribal land, lands that in 1830 were owned by leaders of the tribe and are operated at the present day by leaders of the tribe who are direct descendants of the Choctaws who existed in 1830. They operate cattle farms, catfish farms, and grow shrubbery that they sell. The Mowa Choctaws are doing all that they can to sustain themselves. They have certainly done a wonderful job of preserving their Indian identity.

However, there is a new generation of Mowa Choctaws coming up and these people have continued to labor under conditions of prejudice and poverty, and without congressional help. There is concern that the next generation will not be able to continue this wonderful tradition. That's why we ask for Congress' help.

The **CHAIRMAN**. Thank you very much, Mr. McCoy. I have a few questions I would like to ask.

Does the Mowa Band of the Choctaw Indians have a constitution?

Mr. Rivers. Your Honor, may I address that as the tribal attorney?

I am the tribal attorney, may I address that question?

The Chairman. Certainly, please do.

Mr. Rivers. We do have a constitution. We have had an informal constitution since the Treaty of Dancing Rabbit Creek through our leadership. We admitted our constitution in 1979 and we just admitted it again in 1985. We do have a constitution that has 3 branches of government, we have our own police force, and we have our own tax district. Yes, we do have a constitution.

The Chairman. May we have a copy of that?

Mr. Rivers. Your Honor, it is in the material already.

Mr. McCoy. It will be in the material—

Mr. Rivers. It is in the box in Alabama. It will be here in 24 hours. [Laughter.]

The Chairman. And Chairman Weaver was elected pursuant to the provisions of this constitution?

Mr. Rivers. Yes; he was.

The Chairman. And this constitution has been in effect since the treaty?

Mr. Rivers. Yes.

The Chairman. And the constitution has been in writing all this time?

Mr. Rivers. Not in writing because we could not write. Up until recently we were illiterate.

The Chairman. When was the written constitution adopted?

Mr. Rivers. The first written constitution was adopted in 1978, but we've had our informal tribal status just as all the Choctaws used to have because of our uneducated situation. We've established our own schools and tried to have as much education as we could, but right now, as tribal attorney, I would estimate that we have 75 percent unemployment. We have drug problems. We have children that have health problems. We have a genetic disorder because we are related to each other.

But I ask this committee to take into consideration that we are not here by accident. We were left here because of the treaty obligation. I would ask you to address that if it is possible.

The Chairman. The committee has in its files a copy of a letter dated December 10, 1981 issued by the Attorney General of the State of Alabama issuing an opinion that the Mowa Band of Choctaws has been recognized by the State of Alabama as a result of two Acts of 1979. Has this opinion been rescinded?

Mr. Rivers. Mr. Chairman, it is still standing. The opinion is based on a case that I have included in my testimony of *Wall* v. *Williams*. A Choctaw woman was sued in the Alabama court to take some property from her because her husband had deserted her and went to the Indian territory. The lower court of Sumter County ruled that she could lose the property. The Choctaw Law has always been that if a woman is deserted by her husband all their possessions go to her. His debtor sued her to get it. She appealed to the Supreme Court of Alabama and in Alabama the Supreme Court ruled that because they took his land with his assets they took his disability. That disability was allowed by our laws and customs, therefore she did not lose her property. That is the basis for the Attorney General's opinion and his opinion in that case has never been overturned in any court of the United States.

The **Chairman**. And 1988 was the first time that the Choctaw Band filed an application for recognition or acknowledgment?

Mr. **Rivers**. No, sir; we petitioned Congress in 1836, 1850—we testified before Congress in 1880—all that is included in our documentation. We have—

The **Chairman**. But the most recent is 1988?

Mr. **Rivers**. Yes; the most recent was 1988.

The **Chairman**. How much have you spent in this process so far?

Mr. **Rivers**. So far we have spent, in real money, about $100,000. And we have volunteers, like Ms. Matte who's worth over $1,000, who works for free.

The **Chairman**. Pursuant to the constitution does the Choctaw Band maintain a roll of membership?

Mr. **Rivers**. Yes, sir; we have it on a database.

The **Chairman**. How many members do you have?

Mr. **Rivers**. At this particular time we have 4,400.

The **Chairman**. Do you have any blood quantum requirement?

Mr. **Rivers**. You have to be at least one-quarter.

The **Chairman**. At least one-quarter?

Mr. **Rivers**. Yes.

The **Chairman**. Do you have to trace your ancestry to the time of the treaty?

Mr. **Rivers**. We have traced the ancestry. The treaty was signed by our ancestors.

The **Chairman**. Those who have opposed this bill have suggested that the Mowa Band of the Choctaw Indians is made up of remnants of Cherokee, Choctaws, and Creek Indians who refused to go to Oklahoma. Is that correct?

Mr. **Weaver**. Could we let Jacqueline Matte respond to that?

Ms. **Matte**. Thank you.

STATEMENT OF JACQUELINE MATTE

To the best of our knowledge and research, which I have done and others have contributed to, we have determined that the majority of the ancestors were Choctaw basically from the Six Towns Yowani Village, which did not remove. They lost their land in 1805 when they signed it away, when they ceded it. They remembered, through oral history, over 400 hours of testimonies, that they are who they say they are. We do have two lines of other Indians that came in early as part of a general western removal of the Indians. We have one Cherokee family who came in in the 1820's and we have one Creek family—and all of these of course have many descendants—but we have one girl whose father was a Creek and her mother was a Choctaw. That is where the Creek line comes in and the Cherokee line comes in. The earlier ancestors were predominantly Choctaw.

As the letter that Mr. McCoy focused on indicated, in the 1840's and 1850's there were over 400 Choctaw Indians in Mobile County and they listed several names of who they were married to and we have the Indian name as well as the English name.

The CHAIRMAN. And you are maintaining that since the treaty, an identifiable community of Choctaw Mowa Indians with an identifiable governing body has existed to this day?

Ms. MATTE. Yes; I do.

Mr. McCOY. Mr. Senator, if I may. Perhaps the best evidence of that is that if you look at the names that are set out of the people that signed these treaties dating back to 1801, those names are the names of the present day tribal members as well, or names that trace down to the present day tribal members and have been in genealogical studies.

The CHAIRMAN. As you have requested, the record will be kept open for another 30 days to accommodate you so that you can submit further testimony. We will have to stand in recess at this moment because there is a vote pending on the Senate floor at this time.

I thank all of you from the Mowa Band and I can assure you that we will study your case very carefully, and we will lean over backward.

Mr. McCOY. Thank you.

Ms. MATTE. Thank you.

The CHAIRMAN. When the committee resumes its hearing, we will take up S. 1747 Ponca Restoration Act, and we will receive testimony from the chairman of the Northern Ponca Restoration Committee, Mr. Marshall Prichard and Mr. Fred LeRoy, project coordinator.

[Recess.]

The CHAIRMAN. And now we will consider S. 1747, Ponca Restoration Act. We have with us Mr. Marshall Prichard and Mr. Fred LeRoy. Mr. Prichard.

STATEMENT OF MARSHALL PRICHARD, CHAIRMAN OF THE NORTHERN PONCA RESTORATION COMMITTEE, OMAHA, NE

Mr. PRICHARD. Good afternoon, Mr. Chairman.

My name is Marshall Prichard. I currently serve as the chairman of the Northern Ponca Restoration Committee of Nebraska.

First of all, I would like to thank the Chairman of the Select Committee on Indian Affairs for his undaunted support of American Indians. I think American Indians are extremely proud in your role and your leadership on helping Indian country. Thank you very much.

I would also like to thank Senator J. James Exon for introducing S. 1747 and Senator Robert Kerrey for his continuing support.

In the way of personal background, my family appears on the final Northern Ponca roll, which was compiled by the BIA in 1965. I am a direct descendant of Smokemaker who also testified before the U.S. Senate on relations between the Government and the Ponca Tribe over 100 years ago. I was raised on the Yankton and Oglala Sioux Indian Reservations in South Dakota. I have been involved in a number of activities in Indian country as an adult, serving as director of the Lincoln, Nebraska Indian Center, chairman of the Nebraska Indian Commission, and I was also project leader with the John Hay Whitney Foundation for the Nebraska Indian Economic Development Project.

In our appearance today, we are requesting that the Senate Select Committee on Indian Affairs act favorably on our tribe's Restoration Bill S. 1747. In our written testimony which we have submitted, you will read stories about Indian people who find themselves trapped in a sort of no-man's land, neither Indian nor white. Last year, this committee formally repudiated the Federal termination policies.

Today, we are before you as one of the last of the terminated tribes seeking restoration. In our appearance today, we seek to continue a relationship that dates back to our first treaty with the U.S. Government in 1817. Additional treaties followed, the last being in 1865. At that time our lands had been reduced from several million acres to 98,000 acres. Through a major blunder, our land was later given to the Great Sioux Nation in the 1868 Fort Laramie Treaty and 9 years later, our people, collectively, were forced to go to Oklahoma Indian country. That forced relocation march is now remembered by our people as the Ponca Trail of Tears. Clearly one-third of our nation perished in that march.

Despite that, many of our people found relocation unacceptable, and against heavy odds, followed our great Chief Standing Bear on a difficult trip back to our ancestral homeland along the Niobrara River in Nebraska. While many of the Poncas stayed behind in Oklahoma, those of us who returned to our homeland succeeded in reasserting our rights in our original reservation and maintaining Federal recognition as the Northern Ponca Tribe up until the termination vote in 1962.

S. 1747 would restore rights to the tribe that existed prior to termination; would allow for the provision of services to tribal members who have been without since termination; it defines a procedure for development of an accurate membership roll; provides for the adoption of a tribal constitution and by-laws; and finally, S. 1747 calls for the development of a tribal economic development plan within 2 years from enactment. But most of all, even though it is not written in the bill, S. 1747 provides new hope and a better future for the Ponca people.

In conclusion, I would like to thank members of the committee and the staff for the opportunity to testify in behalf of S. 1747. I ask for your support.

Thank you very much.

[Prepared statement of Mr. Prichard appears in appendix.]

The CHAIRMAN. Thank you.

Mr. LeRoy, would you care to make your statement?

STATEMENT OF FRED LeROY, PROJECT COORDINATOR FOR THE NORTHERN PONCA TRIBE OF NEBRASKA, OMAHA, NE, ACCOMPANIED BY DR. ELIZABETH GROBSMITH, DEPARTMENT OF ANTHROPOLOGY, UNIVERSITY OF NEBRASKA, LINCOLN, NE

Mr. LeRoy. Yes.

Mr. Chairman, before I start I would like to introduce Professor Elizabeth Grobsmith from the University of Nebraska at Lincoln. She studies anthropology. Her assistant is Beth Knoche who researched a lot of this information that we're presenting to you right now.

Mr. Chairman and members of the committee, my name is Fred LeRoy, currently project coordinator for the Northern Ponca Restoration Committee.

I am on a 1962 northern Ponca tribal roll compiled by the BIA. I am a Vietnam veteran having served with the U.S. Marine Corps, and a great grandson of Black Eagle who served as an Indian scout in the Civil War. I am honored to be here.

During the last 28 years, termination has caused many problems with our people as was mentioned by Mr. Prichard. Loss of Federal recognition has not only affected the tribe in Federal services and benefits, but it has also resulted in a decline of our tribe's culture and traditions.

In the history, Socio-Economic Report completed by Professor Grobsmith, it details the current and past problems of the tribal members and also provides documentation on how we fulfill the Administration's criteria for Federal recognition. I would like to briefly summarize on how we meet those criteria.

But before I do that, as background, the Ponca Tribe was recognized up until the termination of 1962. The Poncas had 4 treaties ratified by the U.S. Congress. We have resided in northeastern Nebraska as a community of native Americans for as long as we can remember. We practiced then, and continue to practice, our traditions and customs.

On criteria 1 there exists an on-going, identifiable community of Indians who are members of our formerly recognized tribe or who are their descendants. The Ponca tribal members continue to live in the aboriginal lands of the Ponca Tribe. We are recognized by the State of Nebraska and the other 3 federally recognized tribes as the Ponca Tribe.

On criteria 2, a majority of today's tribal members still live in the vicinity of the former reservation on aboriginal Ponca lands.

On criteria 3, the tribe has continued to perform self-governing functions either through elected representatives or in meetings of our general membership. In 1962, immediately following termination, a Ponca tribal cemetery committee was formed to continue tribal functions. The Ponca Tribe was incorporated in 1971 to seek Federal recognition, and to continue their customs and traditions. Tribal meetings have been held and representatives elected to maintain our community ties and for our restoration efforts.

On criteria 4, there is a widespread use of our aboriginal language, customs, and culture. The termination of the tribe did not stop the Poncas from continuing their customs, sundance, vision quest, singing, dancing, and other types of traditional ways.

On criteria 5, there has been a marked deterioration in our social-economic conditions since termination. The Poncas have a 57-percent unemployment rate compared to the average Nebraskan rate of 3 percent; 31 percent of the Poncas live below the poverty level compared to 10 percent of all Nebraskans.

And on criteria 6, our conditions are more severe than in adjacent rural areas or in comparable areas within the State. The Ponca tribal members have one of the highest rates of unemployment, poor housing, and inadequate health care whether in the city or urban area.

I conclude my testimony by thanking the committee and the members for setting up this hearing.

[Prepared statement of Mr. LeRoy appears in appendix.]

The CHAIRMAN. Mr. LeRoy, you have indicated that you have had an ongoing identifiable community. For how long?

Mr. LEROY. Since the termination.

The CHAIRMAN. Since 1962?

Mr. LEROY. Yes.

The CHAIRMAN. In this community do you have any constitution?

Mr. LEROY. No; we go by the Articles of Incorporation of our committee.

The CHAIRMAN. Do you have these articles?

Mr. PRICHARD. Yes; we do, Senator.

We have submitted the Articles of Incorporation for the tribe, yes.

The CHAIRMAN. It is filed with the State of Nebraska?

Mr. PRICHARD. Yes, sir.

The CHAIRMAN. Do you maintain a membership roll?

Mr. LEROY. We maintain a membership roll that was compiled by the BIA in 1965.

The CHAIRMAN. How many members do you have?

Mr. LEROY. We have close to 1,000 members.

The CHAIRMAN. Do you have any requirements of membership?

Mr. LEROY. Yes; you have to be a descendant or beyond that 1965 roll.

The CHAIRMAN. You have stated that you are recognized by the State of Nebraska. In what way, sir?

Mr. LEROY. We had a legislative resolution passed by the Nebraska Unicameral of all the State Senators recognizing the Poncas as American Indians in the State of Nebraska and supporting our efforts for Federal restoration.

The CHAIRMAN. May we have a copy of that?

Mr. LEROY. Yes; it is in our letters of support that also include support from the BIA, Aberdeen, and from the 3 federally recognized tribes in Nebraska, and other letters from non-profit groups and various organizations.

The CHAIRMAN. And you are recognized by the other three federally- recognized Indian tribes?

Mr. LEROY. Yes; there are tribal resolutions in there also supporting our efforts to be Federally restored.

The CHAIRMAN. Are you at present receiving any benefits from the State of Nebraska?

Mr. LEROY. We have not received anything.

The CHAIRMAN. Are you receiving any benefits from the Federal Government?

Mr. LEROY. We receive administration from Native American Funding.

The CHAIRMAN. From where?

Mr. LEROY. Administration from Native American.

The CHAIRMAN. You have received grants from them?

Mr. LEROY. Yes.

The CHAIRMAN. Well, I gather that the BIA has no objection to the passage of this bill.

Mr. LeRoy. No, Senator; we met with them earlier this morning and they said that they would support it, but they wanted to make sure that we fulfill all of the criteria for the adminstration and we may talk to them and send more information that they may need sent to them.

The Chairman. The BIA has submitted to this committee certain suggested amendments. Have you seen those suggest amendments?

Mr. LeRoy. We have not really seen them, but we discussed them. They said that they were going to send them to us.

The Chairman. May I submit them to you? I would hope that you would study them. Would you let us know?

Mr. LeRoy. Yes, Mr. Chairman.

The Chairman. These amendments are just clarifying for the most part but I hope that you can look them over and tell us whether you approve of these amendments.

Any further testimony for or against the Poncas?

I gather that all of you here support the Poncas application.

Mr. LeRoy. Senator, would it be possible for our tribal members to stand and be recognized for the record?

The Chairman. Most certainly.

I thank all of you for traveling long distances to be with us this afternoon. Your cause is a just one and I will do whatever I can to bring about equity and recognition.

Mr. LeRoy. Thank you very much.

The Chairman. With that the meeting is adjourned.

[Whereupon, at 4:19 p.m., the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

STATEMENT BY SENATOR J. BENNETT JOHNSTON
BEFORE THE
SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
MARCH 28, 1990

Mr. Chairman, I would like to thank you and the members of the Committee for giving me the opportunity to speak on behalf of the Jena Band of Choctaws in this special hearing you have arranged today.

As you know, on November 17, 1989, I introduced legislation to provide reinstatement of Federal recognition for the the Jena Band of Choctaws of Louisiana. This tribe, previously recognized by the Office of Indian Affairs in the 1930's, has been denied its proper status and benefits for the past fifty years and is deserving of present recognition. Therefore, I come before the Committee today and ask that this injustice be corrected and the Jena Band be accorded its proper status without any further delay.

Before the coming of European settlers, the Choctaw Nation lived in the plains and hill country of central Louisiana and southwest Mississippi. During the 19th century, the disruption of the Choctaw Nation by forced removals contributed to dispersed settlements of Choctaw groups throughout the South. The Jena Band is representative of Choctaw bands which formed as separate entities from the Choctaw tribe in the Mississippi area. Today, the Jena Band of Choctaws is a remarkably cohesive unit consisting of about 120 members and residing in Lasalle Parish near Jena, Louisiana.

In 1936, the Jena Band was recognized by the U.S. Congress and the Department of the Interior when funds were appropriated by the Congress and specifically designated by the Office of Indian Affairs for the education of the Jena Band. These funds, which provided support for a separate Indian school to be operated under the direction of Mrs. Charles Penick, were continued for several years. Then, in 1938, authority was granted for the transfer of members of the Jena Band who were willing to relocate to the Pearl River area in Mississippi. However, the majority of the Jena Band remained in Louisiana, and the subsequent abrogation of funds for the Jena Band was not only wrong, but unlawful. As the Congress is the only body granted the authority to revoke recognition and since no such action has been taken, the relationship between the Federal Government and the Jena Band of Choctaws remains intact.

Given their unique case, it would be an injustice to require the Jena Band to undergo the current recognition procedure supervised by the Bureau of Indian Affairs. As you are well aware, this procedure is lengthy, cumbersome, and expensive.

It takes the Bureau of Indian Affairs an average of ten years to process an application, and there is currently a backlog of over 100 applications which have yet to be processed. While I understand that the current procedure is both necessary and appropriate in determining the proper status of most Indian groups, I assure you that the Jena Band is not such a group. The Jena case is unique in that clear and concise documentation exists which demonstrates their previous relationship with the Federal Government. With such convincing proof, there is no reason for the Jena Band to be subjected to the standard acknowledgment process. There is simply no need to waste more time and more money. The established acknowledgment procedure, however well-intentioned and necessary in most cases, will simply serve as an impediment to justice in this instance.

I also understand that legislation is currently pending before this Committee to reform the Federal acknowledgment process in order to facilitate the consideration of tribal applications for Federal recognition. I fully support this idea and have signed on as a cosponsor of S. 611 introduced by the distinguished Chairman of this Committee. While I commend the Committee for their desire to improve the acknowledgment procedure, I do not feel that the consideration of such reform measures should prevent the Committee from rectifying a previous injustice to the Jena Band of Choctaws. The Jena Band has waited long enough.

Unfortunately, despite such clear and convincing documentation, our requests for administrative action by the Bureau of Indian Affairs to correct this situation have been refused. Having exhausted all other possibilities, it appears that our last recourse is to seek resolution through legislation; therefore, I ask the Committee to consider this measure carefully and to reinstate the Jena Band of Choctaws with the Federal recognition they so greatly deserve.

I further understand that members of the Jena Band will propose amendments to clarify that S. 1918 is a bill of reinstatement rather than an extension of Federal recognition. I fully support these changes and hope they will make clear the intent of this legislation. Let me assure you that my staff and I are ready to work with the members of the Committee to help improve the language of S. 1918 and request your assistance in this task.

Once again, I would like to thank you for giving me this opportunity to speak on behalf of the Jena Band and further ask that this letter from the Governor of the State of Louisiana expressing his support for the efforts of the Jena Band be included in the record.

State of Louisiana
OFFICE OF THE GOVERNOR
Baton Rouge
70804-9004

BUDDY ROEMER
GOVERNOR

POST OFFICE BOX 94004
(504) 342-7015

November 27, 1989

The Honorable J. Bennett Johnston
United States Senate
217 Russell Senate Office Bldg.
Washington, D.C. 20510

Dear Senator Johnston,

As Governor of the State of Louisiana I would like to offer my support of the Jena Band of Choctaw's efforts to have their federal recognition reinstated. The tribe has provided all of its petition with supporting documentation for review by the Attorney General, State Police, Legislators and my staff and attorneys. In addition, there are records from the National Archives (File #38014, 1937 Choctaw), which reveal that the Jena Choctaw living in Louisiana in 1937 were offered federal trust lands located in Mississippi. These records reflect that all parties (including tribal members, BIA officials, Indian Education officials and Land Division officials) agreed to and approved the relocation of the tribe to a reservation.

Furthermore the Jena Band of Choctaw have agreed to the release of all land claims against the state up to the date of federal recognition. And finally the tribal leaders have initiated open communications with the state and agreed to enter into a three year agreement of mutual cooperation with the State of Louisiana.

Given the conditions described above, I support this tribe's efforts to seek reinstatement of their federal recognition.

Respectfully,

Buddy Roemer

BUDDY ROEMER
GOVERNOR

STATEMENT BY J. ROBERT KERREY ON THE BILL TO RESTORE THE NORTHERN PONCA TRIBE OF NEBRASKA

MARCH 28, 1990

MR. CHAIRMAN, I WANT TO THANK YOU AND MEMBERS OF THE COMMITTEE FOR ALLOWING ME TO SPEAK ON BEHALF OF S. 1747. I AM PLEASED TO JOIN SENATOR EXON IN SUPPORTING THE PONCA RESTORATION ACT. THIS BILL WOULD GRANT THE NORTHERN PONCA PEOPLE TRIBAL STATUS FOLLOWING TWENTY-SEVEN YEARS OF LEGAL LIMBO. DURING THESE YEARS THE NORTHERN PONCA PEOPLE HAVE LIVED IN A SOCIETY THAT CONSIDERS THEM NATIVE AMERICANS WITHOUT THE LEGAL STATUS.

THESE TWENTY-SEVEN YEARS OF OFFICIAL NEGLECT HAVE HURT THE PONCAS. THE PONCAS HAVE EXPERIENCED A DECLINE IN CUSTOMS AND TRADITIONS, THE LOSS OF FEDERAL SERVICES, EMPLOYMENT-JOB TRAINING, HEALTH SERVICES FOR THE YOUNG AND ELDERLY, INDIAN CHILD WELFARE PROTECTION, HIGHER EDUCATION AND YOUTH PROGRAMS.

THIS BILL IS THE CULMINATION OF A PROCESS STARTED BY THE PONCAS IN 1971 WHEN THEY OFFICIALLY INCORPORATED IN ORDER TO PRESERVE THEIR HERITAGE. IN THE INTERVENING YEARS THE PONCAS CREATED AN ORGANIZATION COMMITTED TO THEIR REINSTATEMENT AS AN OFFICIAL TRIBE. AFTER CAREFUL PREPARATION MEMBERS OF THE NORTHERN PONCA RESTORATION COMMITTEE APPROACHED NEBRASKA'S CONGRESSIONAL DELEGATION WITH A RESTORATION PROPOSAL. THE PONCAS HAVE WON SUPPORT FOR THEIR EFFORT FROM THE LOCAL COMMUNITY OF NIOBRARA, IN THE HEART OF THEIR FORMER HOME, AND THE SUPPORT OF THE NEBRASKA STATE LEGISLATURE.

THE PONCA TRIBE IS AMONG THE LAST OF THE TERMINATED TRIBES THAT IS SEEKING TO BECOME A FEDERALLY RESTORED TRIBE. IN RECENT YEARS CONGRESS HAS SUPPORTED THE RESTORATION OF TRIBES IN AN ADMISSION THAT THE POLICY OF TERMINATION HAD FAILED IN ITS EFFORTS TO INTEGRATE INDIANS BY TAKING AWAY THEIR LEGAL STATUS AS TRIBES. MR. CHAIRMAN, I URGE THE COMMITTEE TO GIVE CAREFUL CONSIDERATION OF THIS MATTER AND HOPE THAT WE CAN RECOGNIZE THE NORTHERN PONCA PEOPLE'S JUST CLAIM.

CONDITIONS HAVE CHANGED IN THE PONCA'S FORMER HOME. IT IS NOT FEASIBLE, NOR IS IT THE INTENT OF THIS LEGISLATION TO CREATE A RESIDENTIAL RESERVATION IN THE PONCA'S FORMER TERRITORY. IT IS THE INTENTION OF THIS LEGISLATION TO SEE THAT THE TRIBE RECOVERS ITS IDENTITY AND CREATE A CENTER DEVOTED TO PRESERVING AND CULTIVATING THEIR CUSTOMS AND TRADITION. THE LEGISLATION ALSO PROVIDES FOR AN ECONOMIC DEVELOPMENT PACKAGE INTENDED TO ASSIST THE MANY PONCA'S WHO EXISTENCE HAS BEEN REDUCED BELOW THE POVERTY LEVEL AND ALLOW THEM TO GAIN ECONOMIC SELF-SUFFICIENCY.

MR. CHAIRMAN, I WANT TO THANK YOU AND MEMBERS OF THE COMMITTEE FOR ALLOWING ME TO TESTIFY ON THIS IMPORTANT PIECE OF LEGISLATION.

PREPARED STATEMENT OF JERRY JACKSON

My name is Jerry Jackson. I have served three terms as tribal chairman of the Jena Band of Choctaw tribe. I am before you today to ask your endorsement for Senate Bill 1918, which calls for the restoration of the Jena Choctaw tribe as a federally recognized tribe. Our case is a simple one, but one which will call for Congressional action.

In 1902 my great-grandfather, Willis Jackson, led the Jena Choctaw tribe to Muskogee, Oklahoma to give testimony before the Dawes Commission. It took them nine (9) months to walk the 600 miles from Jena, Louisiana to Muskogee, Oklahoma. Having no money, they had to work their way there and back again. Several died during this attempt to gain recognition. After their testimony, each family was identified as full-blooded Mississippi Choctaw, entitled to land and services from the Bureau of Indian Affairs. But no land or benefits were given to them. On their return to Louisiana in March of 1903, they received a letter stating that if they would come back by August (a period of 4-1/2 months), they would receive land allotments and other benefits of their recognition.

This was an impossible timeframe for the Jena Choctaw people. No attempt was ever made by the Commission to find out what happened to this qualified group of people.

On July 11, 1938, then Assistant Commissioner of the Bureau of Indian Affairs Zimmerman, authorized the transfer of the Jena Choctaw tribe to reservation lands in

Mississippi, where for the second time the Jena Choctaw tribe would be eligible for services.

This time my grandfather, Chris Jackson, advised Mr. A. C. Hector, Agency Superintendant of the Bureau of Indian Affairs Office, Philadelphia, Mississippi, that we were willing to relocate. But the Bureau did not follow through with this agreement. So, for the second time we fell through the cracks of bureauacy.

My members have never received the rights and privileges to which we are entitled as American Indians, only a legacy of suffering and poverty. With the unreasonable time and cost of the acknowledgment process, I hope you can see that Senate Bill 1918 is the humanitarian solution to our recognition efforts. We ask only for justice.

We were recognized 52 years ago by the Assistant Commissioner's actions. Since the Bureau has a documented history of recognizing tribes in this manner, and since Congress has not taken this recognition away from us, we remain recognized today, without any services or benefits.

As we have always done, we today manage to hold on to our Indian identity. Our total membership consists of 148 people. Nearly 60% of that 148 possess one-half or more Choctaw blood quantum. We still speak the Choctaw language in the Mississippi Bogue Chitto dialect. We have had a continuous line of leadership and strong community ties.

The majority of our 148 members reside in LaSalle, Grant and Rapides Parishes in Louisiana, a distance of 50 miles or less from the original resettlement location, when our tribe first came from Mississippi during the Choctaw removal period.

Twice in history, the Bureau of Indian Affairs has said "Jena Band, you are entitled." Twice in history the Bureau of Indian Affairs has avoided the fulfilling of its commitment to the Jena Band.

Now the Bureau of Indian Affairs demands that we enter into a process that ignores its past commitments and which will cost the Jena people at least $100,000 and delay the restoration of the Band's status by no less than an additional three years and possibly as many as seven or eight.

We say enough is enough. The Jena Band needs Congressional help in the form of legislation to insure that the Bureau of Indian Affairs will keep a promise made to my people 52 years ago.

This concludes my statement. I would be happy to answer any questions which you may have.

If there are no questions I would like to introduce my friend, Mr. John Shapard, who is presently assisting the Jena Band with our efforts in the acknowledgment process. Mr. Shapard, who has volunteered his services to the Jena Band for almost a year now, without compensation, is the former chief of the Branch of Acknowledgment and Research. He is the author of the regulations, and the original organizer of the Branch of Acknowledgment and Research. Under his direction the Branch reviewed and processed approximately 19 petitions. During his 24-year career with the Bureau of Indian Affairs, he received four Superior Performance Awards, three of which were a result of his work in the Branch of Acknowledgment. He is a respected expert in the field of federal recognition of Indian tribes and in the application of the present regulations. We feel fortunate that he is willing to volunteer his time to be here to testify in behalf of the Jena Choctaw tribe.

STATEMENT OF SENATOR WILLIAM S. COHEN ON S. 1413, THE AROOSTOOK BAND OF MICMACS SETTLEMENT ACT

March 28, 1990

MR. CHAIRMAN, I appreciate your scheduling of today's hearing on S. 1413, the Aroostook Band of Micmacs Settlement Act, which I introduced along with Senator Mitchell.

The bill before you today attempts to resolve the claims of the Aroostook Band of Micmacs as a result of their omission from the Maine Indian Claims Settlement Act of 1980. As one who was deeply involved in the drafting of the Act, I can state that the omission was inadvertant and became evident several years after passage of the Act. The reasons for the omission are easily explained, but the fact remains that the Micmacs were omitted from a settlement they probably would have been included in had they put forward a claim.

The original settlement of 1980 was a response to land claims brought against the state of Maine by the Passamaquoddy and Penobscot tribes in 1972. Over the next few years, those claims affected the economic well-being of many towns in Maine, and brought a great deal of uncertainty to citizens around the state. A negotiated settlement was the most appropriate solution, and that process took place with the full involvement of the two affected tribes, the state of Maine and the federal government. In the final months of this negotiation process, a land claim was asserted on behalf of the Houlton Band of Maliseet Indians, a state-recognized tribal group in Aroostook County without reservation lands. Based on the historical evidence gathered by this group, it appeared that their claim had some validity and, in the interest of resolving all the claims in an expeditious and fair manner, the Band was included in the final settlement.

As a result, the Maine Indian Claims Settlement Act provided $81.5 million in compensation to the three affected tribes for the extinguishment of their tribal claims, including $900,000 for a land acquisition fund for the Houlton Band of Maliseet Indians. The Act also recognized the tribal status of the Houlton Band of Maliseet Indians, and established a complex scheme of state/tribal jurisdiction for the two larger tribes.

Today, we recognize the wisdom of that settlement in light of the benefits it has provided to the three named tribes and the citizens of Maine. But it brought unintended hardship to Maine's fourth tribe, the Aroostook Band of Micmacs. The Settlement Act began with a finding that all tribes in Maine other than the three named in it had "long ago abandoned their aboriginal holdings." The settlement also extinguished tribal claims of all tribes and tribal groups in Maine, and it contained broad language forbidding the acquisition of trust lands on behalf of any tribal group other than the three named. Four months after it was signed into law, the state's Department of Indian Affairs closed its doors.

As a result, the Aroostook Band of Micmacs lost its legal right to assert a land claim in Maine and was not compensated in any way for that loss. Without the right to acquire trust lands, the Band's ability to benefit from federal recognition in the future was severely compromised. In addition, the loss of state services was a tangible hardship to this Band and its members.

The contrast between the situation confronting the Micmacs and the Maliseets in the aftermath of the Maine Indian Claims Settlement Act was particularly marked. For many years, the histories of the Micmacs and Maliseets in Maine were closely linked. Both groups lacked reservation lands but were located within the boundaries of Aroostook County. Both were small groups of about 400 members. Both had been recognized as tribes by the state of Maine and were receiving limited benefits from the Maine Department of Indian Affairs. Both were represented by the Association of Aroostook Indians, formed in 1969 by a Micmac, Tom Battiste, and a Maliseet, Terry Polchies. This Association was headquartered in Houlton, where the majority of Maliseet members were located. When limited funds became available in 1979 to conduct research on the tribal histories of both groups, the Association chose to concentrate on the Maliseet claim, which was easier to document. It was that research that ultimately allowed the Maliseets to become part of the final Settlement Act.

In the years since the Settlement Act has become final, the Aroostook Band of Micmacs has regrouped and moved forward. Historical research on the Band's presence in Maine began in 1981. Public awareness of the Band's plight has come more slowly, but in the past few years support for a resolution of this issue has reached a consensus. The other Maine tribes were the first to support the Band's efforts and have consistently encouraged the settlement of their claims. Towns and cities around Aroostook County issued resolutions and letters of support for the Band's claims, starting in 1987. In that same year, the Maine Legislature passed a Joint Resolution memorializing Congress to take action on the claims. Our state Attorney General, Jim Tierney, also supports passage of this bill and has submitted testimony for today's hearing.

In 1989, the Maine Legislature approved legislation to implement the provisions of Federal law regarding the purchase of trust lands in Maine for the Micmacs. The legislation was introduced by a bi-partisan group of lawmakers from Aroostook County and received unanimous support from the three other tribes at the public hearings on that legislation. The Band has also gathered support from various civic and religious organizations around

Maine, including a group from Winthrop High School, which is represented here today by Becca Yturregui and Reed Dyer.

The Settlement proposed in this legislation closely parallels that provided to the Houlton Band of Maliseets in the 1980 Settlement Act. According to the provisions of S. 1756, the Aroostook Band of Micmacs would receive $900,000 for a land acquisition fund, and recognition of its tribal status, making members eligible for the full range of benefits offered by the federal government to individuals and groups because of their special status as Indians.

This is a fair resolution of the Band's claims and will finally resolve the ten year period of uncertainty which has confronted this group.

I hope the Committee will look favorably on this bill and move its passage in the near future.

Statement of Senator George J. Mitchell
Hearing Senate Select Committee on Indian Affairs
March 28, 1990

I want to extend my appreciation to Chairman Inouye for holding this hearing today to examine S.1413, legislation introduced by Senator Cohen and myself, which would effectively settle all claims of the Aroostook Band of MicMacs resulting from the Band's omission from the Maine Indian Claims Settlement Act of 1980.

This legislation would establish the historical presence of the MicMacs in Maine and provide Federal recognition to the Band. Federal recognition will enable members of the Band to be eligible for services the federal government provides to American Indians.

The legislation also provides for $900,000 to be placed in a land acquision fund and property tax fund to allow the MicMacs to purchase land, and to pay taxes on that land to the State of Maine.

The Aroostook Band of MicMacs, in both its history and its presence in Maine, is similar to the Houlton Band of Maliseet Indians. This bill will grant the Aroostook Band of MicMacs the same settlement provided to the Houlton Band of Maliseets two years ago.

Enactment of this legislation will enable the Aroostook Band of Mic Macs to establish a much needed land base in Maine.

I am pleased that a number of members of the Mic Macs have come to Washington to be at today's hearing. I hope that their testimony will provide the support needed for the Committee to approve this important legislation.

PREPARED STATEMENT OF MARY PHILBROOK, PRESIDENT OF THE AROOSTOOK BAND OF MICMACS, IN SUPPORT OF S. 1413, "THE AROOSTOOK BAND OF MICMACS SETTLEMENT ACT", BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS, MARCH 28, 1990

Mr. Chairman, members of the Committee, my name is Mary Philbrook and I am the elected tribal leader of the Aroostook Band of Micmacs. I am here today to speak in support S. 1413 of the "Aroostook Band of Micmacs Settlement Act" on behalf of our people.

I would like to introduce the other members of the Band who have travelled to Washington with me: Wilfred Sanipass is the Vice President of the Band, Mary Shaw represents the Elders Council, and David Sanipass works with the Micmac youth. They have prepared statements of support for this bill which will be included in the record.

I would like to thank Senator George Mitchell and Senator William Cohen for their joint sponsorship of this settlement bill. We are very grateful to the entire Maine delegation for supporting this legislation as a fair settlement of our claims. Those claims result from our Band's omission from the comprehensive Maine Indian Claims Settlement Act in 1980.

Our Band currently has 482 members, most of whom are living in Aroostook County, Maine. Aroostook County is in the northeast corner of Maine; the St. John River separates Aroostook County, Maine from New Brunswick Province in Canada. While we do not have a reservation, most Band members live within a 20 mile radius of Presque Isle, where our tribal headquarters are located.

The Band is governed by a nine person tribal council, each of whom serves a two year term. We do not have a tribal constitution; our by-laws are the governing document. Our general membership meeting takes place on the first Sunday in April. We hope to have good news to give our people at that meeting on this coming Sunday in Presque Isle regarding Congressional approval of this legislation.

We operate a very small office in the city of Presque Isle. We use the Band office mostly as a referral service to programs that we cannot currently offer our members. We also operate a "Basket Bank" cooperative for Micmac craftspeople. Our baskets are well-known and sold all over the United States. Using volunteer help from the Micmac community, we also produce a newsletter and provide some youth programs.

Most people have heard about the Maine Indian Claims Settlement Act, which settled the claims of the Passamaquoddy, Penobscot and Maliseet tribes to land in Maine. That Act became law in 1980, and gave those tribes a total of $81.5 million in compensation. The Act also spelled out the future relationship between the United States government, the State of Maine and all of the Indian tribes in Maine, including the Micmacs even though we hadn't been a part of the negotiations at all.

Even though the whole point of the 1980 Settlement was to fairly and honorably resolve the claims of Maine's Indian tribes, it treated Micmacs unfairly. We lost our right to claim title to aboriginal lands in Maine because of it, but we received no money for that loss. We lost the right to have tribal land taken in trust on our behalf, even though many federal programs require trust lands. Our ability to become recognized as a tribe in the future by the United States was threatened by language in the 1980 Act. We received no services or programs as a result of the Settlement passing and we lost all the state services and programs we had been receiving from the Maine Department of Indian Affairs, when that agency closed its door just four months after the 1980 Settlement became law.

All of these things were wrong, although no one intended to hurt us by passage of the 1980 Settlement Act. We were just overlooked. And it has taken us ten years to reach a point where we can today ask you to address that wrong and to correct it.

In those ten years, we have gathered the historical research on Micmacs in Maine which was not available back then. We have formed a good strong organization with experienced tribal leadership and advice from our Elders. And we have worked hard to document every aspect of our case.

This bill which you are considering today is not a "recognition" bill; it is a fair settlement of all our claims resulting from our omission from the Maine Indian Claims Settlement Act of 1980.

To reach this point, we needed and received support from every member of the Main Congressional delegation, the Penobscot and Passamaquoddy Tribe and the Houlton Band of Maliseet Indians, the Maine Legislature, State Attorney General James Tierney, and towns, cities, civic and religious organizations all over the State of Maine.

There has been a big change in public attitude about Indian settlement bills in Maine over the past ten years; the support we have received is a real tribute to the good results of the 1980 settlement for everyone else in Maine. Most people in Maine never knew that Micmacs were left out of the 1980 Settlement; we have welcomed the enthusiastic efforts of groups like "S.O.S. Micmac" from Winthrop High School in Winthrop, Maine, to correct this injustice.

Today we hope to see the harsh consequences of the Band's omission from the 1980 Settlement Act reversed. Passage of the Aroostook Band of Micmacs Settlement Act will insure that Band members benefit from the full range of federal benefits and programs offered to individuals because of their special status as Indians.

We have sought to guarantee those benefits through other procedures, specifically in 1987 by filing petitions for individual and group recognition as "half-blood" Indians under the 1934 Indian Reorganization Act. But, in over three years, the Bureau of Indian Affairs has never acted on those petitions.

Passage of the Micmac Settlement bill will also restore our Band to parity with the Houlton Band of Maliseet Indians. The history of the two Bands in Maine was very similar until 1980, when the Houlton Band was included in the Settlement Act and the Aroostook Band was not.

At that time, the Houlton Band was better organized and their historical presence in Maine was easier to document. If there had been more time to assemble our case, I believe that the Aroostook Band would also have been included in the Settlement, but time ran out before that happened. Now, ten years later, we are asking Congress to provide us with tribal land acquisition funds and benefits, and to be treated equally with the Houlton Band.

We hope that Congress will correct this injustice through passage of the Micmac Settlement Bill. I would be happy to answer any questions you might have.

STATEMENT OF DR. HARALD E. L. PRINS, BOWDOIN COLLEGE, IN SUPPORT OF S. 1413, "THE AROOSTOOK BAND OF MICMACS SETTLEMENT ACT", BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS, MARCH 28, 1990

As Maine's only Native American community without a tribal land base, the Aroostook Band of Micmacs faces major challenges in its quest for cultural survival. Mostly poverty-stricken, the vast majority of the Aroostook Micmacs today make a living as seasonal farm workers, blueberry and potato pickers, day laborers, lumber jacks, and basketmakers. Many live as their migratory ancestors did, in makeshift dwellings erected for more or less temporary reasons in remote and rural locations.

The Micmac Indian community in northern Maine forms part of a larger ethnic group, known as the Mikmaq Nationimou (Micmac Nation). The Micmac range traditionally stretches from Cape Sable (Nova Scotia) in the south, to Cape Breton Island in the east, to Gaspe Peninsula in the north to the St. John River drainage area in the west.

The homeland of the Aroostook Band of Micmacs is situated in Maine on the west bank of the St. John River. More than 400 miles long, this river marks Maine's northeastern boundary with Canada. Local archaeological finds indicate that Indian food-collectors inhabited this region as early as 12,000 years ago. Historical records available indicate that the St. John River drainage area, including northern Maine, fell within the parameters of the traditional Micmac range. This aboriginal range overlapped with that of their Maliseet neighbors. As such, records of their presence in the region reveal an historical pattern of joint-use territoriality. This finding is not only supported by available oral traditions and folklore, but is also corroborated by place names in the area, showing that the names of many local features in the land-scape, rivers, lakes, and other locations are of Micmac as well as Maliseet origin.

Until the 19th century these vast northern woodlands in the drainage area of the upper St. John remained virtually terra incognita for non-Indians. Indeed, it remained a disputed territory until the Webster-Ashburton Treaty of 1842, when the United States and Great Britain agreed upon the current international boundary slicing through the traditional tribal range of the region's Maliseet and Micmac Indians.

In contrast to Aroostook County, Maine's coastal region and the St. John River, which was a major travel route between the Bay of Fundy and the St. Lawrence River, were exposed to European exploration and settlement and selective documen-tation since the early 17th century. In my more extensive anthropological report on the Aroostook Band of Micmac Indians, detailed documentary evidence is offered of Micmac historical presence in Maine since the early colonial period. Because Aroostook County is situated in the St. John drainage area, I have included references to Micmac activities in this general region (which includes New Brunswick Province, Canada) in my report.

The ancestors of the Aroostook Micmacs made a living as migratory hunters, trappers, fishers and gatherers until the 19th century. Traveling along the myriad of waterways, they moved in birch-bark canoes to transport their families and goods in the ongoing pursuit of subsistence. In the winter, snowshoes and toboggans were used. Birch-bark wigwams functioned well in this mobile way of life, since these makeshift dwellings were easy to dismantle, transport, and erect at another camping ground, where several of these wigwams formed a temporary Micmac encampment.

The traditionally simple social and political structure of the Micmacs was equally flexible and functionally adapted to this migratory mode of subsistence. As such, Micmac political organization generally follows the northeastern Algonquian pattern which is typically based on voluntary association and is characterized by relatively little formal structure. The lines of authority in these kin-groups are usually vague and are based on situational need and consensus among the member families.

Historically, the Micmac form part of an inter-tribal alliance called the Wabanaki Confederacy, established during the 17th century to counter aggressive inroads by enemy tribes and invading Europeans. Joining with the Micmac were their fellow Algonquian-speaking neighbors, the Penobscot, Passamaquoddy, and Maliseet. Between the end of King Philip's War in 1678 and the American Declaration of Independence in 1776, this confederacy of "Eastern Indians" made multiple treaties with the colonial government of Massachusetts, which then possessed jurisdiction over [the Province of] Maine. Indeed, the Micmac tribe was included or expressly made signatory to ten treaties with Massachusetts (which included the District of Maine at the time) between 1678 and 1752, many of which were negotiated on the coast of Maine.

As members of the Wabanaki Confederacy, the Micmacs became involved in the American Revolutionary War at a very early stage. Indeed, they played an important military role on the northeastern frontier of the United States. When the war began in 1775, the Micmac and their Maliseet allies immediately offered General George Washington their support, promising "to stand together and oppose [those] that are endeavoring to take yours and our lands and Libertys from us."

Just 15 days after the Declaration of Independence had been endorsed by the U.S. Continental Congress in 1776, a formal political alliance was established between the newly formed government of the United States of America and the Micmac and Maliseet. At the conclusion of the conference in Watertown, Massachusetts, the Micmac agreed to a friendship treaty with the

United States, now generally referred to as the Treaty of Watertown.

After reading the Declaration of Independence, Massachusetts Governor James Bowdoin then proclaimed that the Micmac and Maliseet had become their "Brothers," and declared that "the United States now form a long and strong chain, and it is made longer and stronger by our brethren of the [Maliseet] and Micmac Tribes joining with us; and may the Almighty God never suffer this Chain to be broken." As President of the Revolutionary Council, Governor Bowdoin then toasted "and wished that the friendship now established might continue as long as the Sun and Moon shall endure, which was pledged by the Indians."

As tribal allies of the United States, Micmac warriors joined the American revolutionary forces under Colonel John Allan in Machias, eastern Maine, who had been named "Chief Commander of the Eastern Indians." Arriving in their birch-bark canoes, they presented Colonel Allan with "a long string of Wampum declaring the most fervent Zeal for America." With their fellow Wabanaki, Micmac tribes people camped in the woods nearby, and elected their own war leaders, who were then "commissioned, with the pay of lieutenants, and authority to maintain the U.S. stronghold at Passamaquoddy." Colonel Allan paid the Micmac from an account called "Indian Contingencies," which was funded by the United States. In addition, their supplies came from the Machias trading post "at the Charge of the United States."

In November 1783, after the signing of the Treaty of Peace by the United States and Great Britain, Colonel Allan met with tribal representatives of the Micmac and their Wabanaki allies at Passamaquoddy Bay. One of the native war leaders, Nicholas Hawwawes, poke for the Micmac and Maliseet. Holding a wampum belt, he complained that the new nation was dealing unjustly with its native allies:

> A number of [white] people have come among us whom we don't know and taken our lands and streams. You say it is peace...but we don't hear anything is done for us, no mention is made of the Indians in this country. We have been fighting for you and secured for America all the lands on this eastward country to the River St. Croix and always been ready to take up the hatchet when you call. You promised to secure for us our hunting grounds...How must we live now, we know nothing but hunting, you white men can live other ways....Brother, the belt we have delivered you is for the great council of America as a token of our love and friendship. We desire that they may look upon us as their brothers, that they will support us in our rights...

In 1784, at the request of Massachusetts, which had jurisdiction over Maine until 1820, U.S. Congress abolished its Eastern Indian Department. Two years later, Massachusetts signed a treaty with the Penobscot Indians. In 1790, U.S. Congress enacted the first Non-Intercourse law. With respect to the agreements made with the Micmac and their Wabanaki allies, however, there was still some unfinished business.

Still responsible for the management of Indian affairs in this eastern border territory, Colonel Allan met with Wabanaki representatives from groups "situated on the streams between Penobscot & St. Johns, with such of the Micmac Tribe adjacent." In 1791, they sent a petition to the government of Massachusetts in which they pleaded:

> Since Peace, we have been wandering from place to place Those spots of ground, which were wont to be our abode, are taken up on the American as British side, and when our Familys attempt to encamp thereon are threaten'd with every insult, so that our women & children are in continual fear -- It is to you therefore, we look as our Chiefs..It is in this Country we wish to make our home -- We ask from you to fulfill those promises made in War...We have given no trouble, nor any expense arose on our parts since Peace. We expect you will answer this, with friendship....

The following year, the Micmac and Maliseet petitioned the General Court of Massachusetts again. And in response to that petition, the State appointed an official delegation to meet with the increasingly disaffected Wabanaki tribespeople. They met at Passamaquoddy Bay with 40 Indian representatives, including the "principle characters of the Mallisheete, Passamaq[uoddy] & Micmac Tribes..."

Complaining bitterly about white encroachments of their traditional territories, Micmac and Maliseet tribal chiefs met with Colonel Allan, and lamented:

> That the Promises made in time of War, were not fulfilled particular that of Lands, for improvements and residence, to they had resigned to the United States all Claims within several Haunts, on Condition of enjoying an Equal right with others.

Though Colonel Allan protested that "there is no distinction to be made" between the various Wabanaki groups, the treaty signed in 1794 ultimately affected only the Passamaquoddy Tribe.

In this period, Colonel Allan referred to the continued presence of Micmac families in the woods of eastern Maine:

> On the Schoodick Lakes you will find numbers of Indians from Canada, St. Johns, Penobscot and the Micmack country pursuing their several employments agreeable to the seasons. Some constant residents, & many of them for years not seen on the seacoast, being perpetually on the move. You may pass one day and see only some scattering wigwams, and the next observe Villages.

Clearly, the Micmac and their Wabanaki allies were jointly using this territory. On account of his long-term association with the Indians on America's eastern frontier, Colonel Allan's observations on joint-use territoriality in the region are of great value. In his writings, he noted:

> A correspondence and intercourse have been opened a long time, through the several Tribes...and their natural propensity for roving is such that you will see families in the course of a year go through the greatest part of this extent...particular as far as Merrimichi and St Francis, so much so that I well know that numbers [of Micmacs and other Wabanakis] which I had in the [Revolutionary] war are now residents in Canada and other distant parts, and many from thence are now living at St. Johns, Penobscot, Passamaquoddy. Thus connected there appears no distinction in the right of the several hunting grounds, for all by some ties or other have an equal claim and are fully domesticated as if natives of the district.

Although Micmac Indians continued to attend the Wabanaki Confederacy meetings throughout the 19th century, which were held regularly at locations in Maine such as Pleasant Point in the Passamaquoddy Bay area and Indian Island in the Penobscot River, their political power as an inter-tribal alliance diminished in the course of time. When they lost control over their last remaining lands in the course of the 19th century, they were reduced to poverty and many were forced to make a marginal living as seasonal laborers or artisans, in particular as basketmakers.

As noted earlier in this report, the St. John River drainage area is situated in the periphery of the traditional Micmac tribal range. As such, Micmac Indians continued to frequent the area. In the early 19th century, for instance, the earliest white settlers moving into the largely uncharted "wilderness" of northern Maine noted that Micmacs and Maliseets "had a roaming permit allowing them free access to the hunting grounds in Aroostook and New Brunswick..."

In the early 1900's, wayfaring Micmac families gradually settled down, establishing more or less permanent residences in the various Indian reserves, off-reservation towns, or rural hamlets. In northern Maine, they settled in the string of border towns in Aroostook County hugging the international boundary with Canada where contemporary members of the Aroostook Band of Micmac still reside. Recounting their transient mode of life, one Aroostook Micmac elder noted: All Indians are nomads, I suppose, and always have been. Indian in older times never stayed in one place either. They followed fishing and hunting to eat. Even today, all our moves are for survival. So, we went back and forth, back and forth for years, following seasonal work opportunities and sometimes just following the crazy whims of fate.

Today, without a tribal subsistence base of their own, most Micmacs in northern Maine occupy a niche at the lowest level of the social order.

In my full report, I present a chronological account which documents Micmac tribal presence in northeastern New England, describes their active participation in the American Revolutionary War, and discuss the genesis of the Aroostook Band of Micmacs in northern Maine. Focusing on their political history, I examine the close cultural, linguistic and diplomatic relationship between them and their Penobscot, Passamaquoddy, and Maliseet allies, with whom they formed the Wabanaki Confederacy. This historic inter-tribal alliance was revived at Indian Island, Maine, in 1977 in order to review the common political challenges hurled at them in the modern period.

In conclusion: based on their demonstrated historical ties to the lands in the drainage area of the upper St. John River, their close relationship with Maine's other tribal communities, their participation in numerous treaty negotiations between the Wabanaki allies and the Massachusetts government since the 17th century, their 1776 Friendship Treaty with the U.S. and their subsequent military support in eastern Maine during the American Revolution, as well as their continued presence as a native community in northern Maine, I conclude that the position of the Aroostook Band of Micmacs appears fundamentally the same as that of the Houlton Band of Maliseet, which gained federal recognition of its tribal status as a result of the comprehensive Maine Indian Claims Settlement Act of 1980.

It is remarkable that the Aroostook Band of Micmac Indians, as a long disenfranchised and landless native group, has not withered away over the centuries. To the contrary, this community in northern Maine has demonstrated an undaunted collective will toward cultural survival.

STATEMENT OF ALVIN H. MORRISON, PROFESSOR OF ANTHROPOLOGY, STATE UNIVERSITY OF NEW YORK, COLLEGE AT FREDONIA, BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS IN SUPPORT OF S.1413, THE AROOSTOOK BAND OF MICMACS SETTLEMENT ACT, MARCH 28, 1990.

Like the Aroostook Micmacs who have been called "Canadian Indians", I, too, straddle boundaries. I am a U.S. citizen, but I am perhaps better known as an anthropologist in Canada than in the U.S.A. And, very important to me psychically, although I have been considered a legal resident of New York state for over twenty years, I still consider myself a Mainer-in-exile, returning every summer to my long-term family place in Maine, my native state. Geographic labeling is as much an inside affair as it is an outside one, with important consequences both ways.

Starting in Maine a quarter-century ago, my major anthropological research interest has been Wabanaki frontier dynamics -- the ongoing social and cultural encouters between the Dawnland Indians, on their own turf, and the various Whites, who began appearing along the Wabanaki coasts ca. five centuries ago. The Dawnland was then and still is at the very least a _triple_ frontier, socioculturally. Yet both the three historical terms _Wabanaki_, _English_, and _French_, and the three comtemporary terms _Wabanaki_, _American_, and _Canadian_, are far too imprecise to be adequate for analyzing the dynamic interactions involved. Indeed, we are here today specifically because the Aroostook Micmacs were left out of a supposedly-generic Wabanaki settlement a decade ago, establishing new relationships with American *Federal*, instead of American *Maine*, government.

So complex were and are the encounters on the Wabanaki frontier that no single interaction "model" can suffice for their analysis. Nonetheless, whatever models one uses must be *dynamic*, not *static*, because any frontier is always in flux. Therefore, in the Maine Indian land-claims cases culminating in the 1980 Congressional settlement, I was a member, *not* of the Wabanaki team, but of the State of Maine's research team, because I could not accept the historical validity of the *static* model that the Wabanaki research team then insisted upon using. Indeed, I discovered that even the author of the static and supposedly *pre*-Columbian system of Family Hunting Territories, anthropologist Frank G. Speck, had abandoned his own static model ca. 1947, in favor of the same dynamic model that I espoused, namely that of ethnohistorian Fannie Hardy Eckstorm. I was delighted that Congress eventually settled the cases favorably for all parties involved, without Speck's abandonment of his own static model ever becomig an issue of debate. The inclusion of the Houlton Band of Maliseets pleased me even more. Clearly, justice was being done, regardless of the poor model, and that was what really mattered. Yet justice stopped just short of completion.

Today, our case for including the Aroostook Band of Micmacs in that 1980 Congressional settlement starts with the twin assumptions of dynamics and shared occupancy -- two concepts considered far too "risky" to use just a decade ago, yet which surely are far more appropriate to understanding the frontier interactions in Aroostook County than their unlikely antitheses. Given this more realistic model, I am convinced that my colleagues have made an adequate and legitimate argument that the Aroostook Micmacs are no less entitled to settlement inclusion than their Aroostook Maliseet neighbors were. The only fault I find is that it has taken ten years to get back to this unfinished business at hand.

TESTIMONY OF DR. JACK CAMPISI, WELLESLEY COLLEGE, WELLESLEY, MASSACHUSETTS, BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS, IN SUPPORT OF S. 1413, "THE AROOSTOOK BAND OF MICMACS SETTLEMENT ACT," MARCH 28, 1990.

The Aroostook Band of Micmacs is an American Indian tribe located in the state of Maine. Lacking any reservation lands, the majority of its members live in Aroostook County, in northeastern Maine, with the largest concentration in and around the city of Presque Isle. In addition, there are smaller concentrations to the south of Presque Isle at Houlton and to the north at Madawaska. The most recent Band roll listed 482 individuals in the Band.

My report is a discussion of the modern Aroostook Band of Micmacs as a distinct tribal community. In order to address the different aspects of tribal identification and proof of community, it is divided into two sections. The first summarizes the historical identification of the Micmacs as an American Indian tribe by federal, state and other tribal authorities. The second section demonstrates that the modern Aroostook Band of Micmacs is a distinct tribal community under the four-part test suggested by the Bureau of Indian Affairs.

Members of the Aroostook Band of Micmacs are descendants from the Micmac Nation whose aboriginal range once encompassed the area from the eastern shores of the Canadian Maritime provinces to southern Maine and even the coast of Massachusetts.

Precisely because of its geographic location, the Micmac Nation was early drawn into contact with non-Indians and the record evidence of the tribal presence of the Micmacs in Maine is extensive. The Micmac tribe was included or expressly made signatory to treaties with the Colony of Massachusetts in 1678, 1693, 1699, 1713, 1717, 1725, 1726, 1727, 1749, and 1752. The Commonwealth of Massachusetts (which at the time included what is now the State of Maine) formed a specific treaty on behalf of the United Colonies of America with the Micmac and Maliseet Tribes in July of 1776 at Watertown, Massachusetts. In this treaty, which was one of the first to recognize the United Colonies of America as a government, Micmacs agreed to support the American revolutionary forces against the British.

By 1792, the Maliseet, Micmac and Passamaquoddy tribes were nearly destitute and in desperation they turned again to Col. Allan. He received a message "from the several Villages on the St. Johns" stating the tribes' demands for a priest and for a grant of land. He recommended a petition to the Massachusetts General Court for land. This petition was subsequently signed by four Micmac chiefs, together with delegates of the Maliseet and Passamaquoddy tribes.

The result of the negotiations was a treaty concluded on September 29, 1794 between the Commonwealth of Massachusetts and the "Passamaquoddy Tribes and Others [including the Micmacs] Connected with them."

As part of the Statehood Act of 1820, Maine assumed all duties and obligations of the Commonwealth of Massachusetts towards the Indians in the State. (Those duties and obligations were subsequently reaffirmed by the Commonwealth of Massachusetts in an 1976 Executive Order, which expressly referred to "treaties and other agreements" with the Micmacs).

Through the first quarter of the nineteenth century, the Micmacs continued their active participation in the Wabanaki Confederacy. The Micmacs participated in meetings of the confederacy in 1861. In the 1860's, the Micmacs, along with the three other Wabanaki tribes, joined a great council fire, held at Caughnawaga. But, under pressure from the State of Maine, the tribes in Maine withdrew.

Over the next years, numerous state laws implicity recognized the existence of Micmacs in the State. By 1972, their status as an Indian tribe had become formally recognized by Maine.

The vast majority of members of the modern Aroostook Band of Micmacs were born in Aroostook County and have lived there most of their lives. The Band itself lacks reservation lands.

Nearly three-fourths of the adult members of the Aroostook Band of Micmacs live in Maine in a corridor along the international boundary, from Houlton on the south to Van Buren on the north, a distance of 79 miles. Presque Isle represents the approximate center of the corridor and has sixty adults residing within the community. Twelve miles to the north is the town of Caribou where the largest concentration of tribal members live, seventy-five adults. The third concentration is in the city of Houlton and numbers forty-three.

The total for the three settlements is 178, or 37% of the total number of adults. Interspersed between these three concentrations are a number of small communities which contain another 32% of the adults of the tribe (Table #1). Thus, two-thirds of the tribal members live in close proximity to each other. (I will submit a table demonstrating this geographic distribution of residency, with a map of the County, for the record).

A common tie for all members of the Micmac Nation is the Micmac language. While some minor dialectical differences exist on a regional basis, all members who speak Micmac can make themselves understood to any other speaker of the language. Within the Aroostook Band of Micmacs, a majority of the membership can speak or understand the language enough to "get by." In 1983, more than half (54%) of the membership still spoke Micmac. From a linguistic point of view, Micmac is closely related to the languages spoken by Maine's other Wabanaki groups, in particular, the Maliseet and Passamaquoddy. Yet, as far as the Micmacs themselves are concerned, these neighbors speak a "corrupted" language. The following excerpt is taken from an interview conducted by Prins and McBride in 1983.

> At one point, Peter [Tom Augustine] began to talk of the aboriginal lands of the tribes, and of the relationship between the Micmacs and the Maliseets and Mohawks: "My father told me that many years ago, the Micmacs and Maliseets were all one. Maliseets then broke off and built their own villages. And because they lived separate from the Micmac, they speak a half language -- not a full language like us, but more like the French-Canadians also speak a half language which is not really French. That's why we call them 'Ma'liseets' -- people who speak funny, somewhat broken. I don't know why, but the Maliseets and Micmacs don't get along together. They never did. They used to be part of the Micmac people. Micmacs lived in all these lands here. We canoed over the St. John River, which Micmacs and Maliseets both used for transportation inland, and where both tribes fished. My grandfather told me that Micmacs have always been in these lands, and that -- I don't know how long ago, but many many years ago -- there was a war with the Maliseets. But the Micmacs went on to the Ocean and they outwitteed the Maliseets who chased them. They went to the Ocean in the North, got in their canoes and ducked low on the bottom of the boats. That way the Maliseets couldn't see them. When they were far enough in the Ocean (Bay of Fundy?) to be safe, they sat up straight and laughed at their enemies at the coast. After that, at later times, the Micmacs continued to use the St. John River for travelling, like a road. That's what my grandfather told me.

The story contains three elements of Micmac cultural traditions. The first is that they speak a different language from the Maliseets (and by implication, all other Maine Indians), and the language they speak is a purer form. Second, the Maliseets may have been a part of the tribe at some time in the distant past, but they have long been separated and are distinct political units. Third, the aboriginal lands in Maine were jointly shared and used by the two tribes.

There was and is a cycle to the movements by families within the Aroostook Micmac community. In the words of one Micmac, "We count by seasons and jobs more than by years."

That cycle, as it evolved, has a number of components. During the winter, Micmacs usually worked in the woods cutting pulp and making baskets.

They lived in shacks made of tarpaper, where the only source of heat was either an outdoor fireplace made by the occupants, or a small stove which they furnished.

While the work in the woods was hard, it was not lonely. Other Micmacs, as well as other Maine Indians, formed the crews. The tribal members knew each other, and many were related. Despite the weather and distances, Micmacs made frequent visits to their parents, particularly their mothers. This network of regular contacts kept family members up-to-date on family matters, other job opportunities, and reinforced their sense of themselves as a social unit.

In late July and August, tribal members gravitated to Maine's wild blueberry fields south of Aroostook County. As in the case of cutting pulp, the Micmacs lived in tarpaper shacks or cabins furnished by the owners. Living conditions were difficult. The camps had no running water, toilets, or facilities for cooking.

By mid-September, most of the tribal members had left the blueberry barrens in Hancock and Washington Counties and were either returning to the woods to cut pulp or back in Aroostook County to harvest potatoes. Historically, this work was strictly stoop labor, in which workers were paid by the barrel (220 pounds) of potatoes harvested.

When the potato harvest was completed, most Micmacs returned to basketmaking for cash income. Most men went hunting, often in family groups. Trapping provided additional small amounts of revenue.

This cycle, what one woman called the "vicious circle" continues today, although there is far more residential stability among the Micmacs. They are a people who keep mainly to themselves, but who carry on an intense and extensive network of relations with other tribal members. Many still can find only temporary employment and must go through the cycle every year. Others, although more permanently employed, still make the trip to Washington, or take part-time jobs in the potato houses to supplement their incomes.

Without exception, everyone I interviewed in the Micmac community in Aroostook County who was over the age of thirty had first hand experience with the lifestyle described above.

The history of the Micmacs in Maine has been one of prejudice and social isolation. They have traditionally occupied the lowest social and economic positions in the state. Directly connected to this burden of poverty is the issue of discrimination against them by the dominant white majority. Not unexpectedly, a State report on the conditions of Aroostook County's native underclass concluded: "to a striking extent, the history and problems of Indians in Maine parallel the history and problems of Negroes in the south."

The Aroostook Band of Micmacs consists of some two hundred households, the majority of which can be grouped into seven kin-groups. According to ancestry records reviewed in preparation for this report, these extended families have intermarried since at least the early nineteenth century.

The residences of the various individuals result in an interlocking pattern. The residential corridor is short and narrow -- only seventy-nine miles long and at most fifteen miles wide -- running along the international boundary on the west bank of the St. John River in Maine.

The high level of intermarriage within the Micmac community is demonstrated by the percentage of tribal members who would qualify for "half-blood" status. The Aroostook Band of Micmacs is largely composed of members with a high degree of Micmac blood, an unusual circumstance for an unrecognized tribal group where the pressures of assimilation are great. A review of the ancestry charts and personal records of 482 individuals listed on the most recent Band roll indicates that over two thirds (67%) of the adults and over 56% of the total population are at least "half blood"

Indians under the standards of the federal Indian Reorganization Act, 25 U.S.C. §461 et seq.

This high level of intermarriage among tribal members is unusual within a tribal community which lacks reservation lands. It is indicative of the maintenance of close social ties among this landless tribal community. Thus, it is clear that the members of the tribe live close to each other, are closely related to each other and interact with each other on a regular basis.

In summary, most of the families in the tribe belong to one of seven consanguineally related kin-groups. These kin-groups, in turn, share a set of common ancestral families dating at least back to the beginning of the nineteenth century, and in some cases even earlier. The present-day members of these kin-groups intermarry, reside close to each other and participate together in social and political activities. Thus they clearly constitute a tribal community.

Many of the key aspects of the Micmac value system have been discussed in the preceding parts of this report. Most certainly, members of the tribal community are cognizant of their distinctive heritage as Micmac Indians, which sets them apart from all other residents in Aroostook County. Moreover, their distinct ethnic identity as "Indians" is affirmed by members of the dominant society. Indeed, it is very clear that the Micmacs intermarry and maintain close ties with other members of the tribe, and have done so for the several hundred years since Euro-American contact. Moreover, it is only in recent years that Micmacs were able to marry whites in the area, so strong was the prejudice against them.

It is equally clear that the tribal members still operate on the basis of the traditional form of their economic system, the seasonal cycle of movements, although they have adapted their seasonal activities to changes in the environment around them. Nonetheless, the cycle had (and has) the effect of confirming the social ties between the convening tribal members and setting them apart from other inhabitants of the region.

Like their ancestors before them, family groups within the Aroostook Band of Micmacs have tended to live together and to follow each other in moves around Aroostook County. Some members of the modern community continue to live in such settlements today, organized along kinship lines and well-known within the Micmac community.

The modern community shares much in common with their ancestors. Pre-contact Micmacs evolved a leadership organization that complemented the highly individualistic nature of the family. Each nuclear family was independent in the sense that it could make decisions concerning where to camp, hunt, fish, and the like. The extended family was headed by an elder male who influenced the behaviors of his offspring. When a number of extended families congregated in a settlement, one of the family leaders was designated as chief. The chief acted as spokesman for the community and mediator of disputes, but he could not impose any formal sanctions, and without community support, his decisions were unenforceable.

The family pattern of leadership is also reflected by the composition of the formal tribal governments which have served members of the Aroostook Band of Micmacs; the overwhelming majority of leaders have been drawn from the Phillips, Labobe, Sock and Sanipass families and all nine members of the current tribal council are related to one or more of those four families.

An important aspect of shared Micmac beliefs centers around the importance of the family, and particularly children. Repeatedly, individuals stress the central role of family in their lives. Kin ties are the dominant feature of the Micmac social system. The ties of children to their mother are particularly strong, with daughters carrying a greater responsibility than sons, although sons seem to have a more honored position with mothers.

Members of the Aroostook Band view themselves as hard working, self-reliant people, and they take great pride in what they have managed to accomplish, meager though it may be in terms of material possessions. This sense of independence, in the view of many, separates them from Micmacs living on reservations in Canada.

The Micmacs share other strong values. They have a sense of responsibility for fellow tribespeople who show up at their door. There is an unwritten understanding that the needs of others will be met if help is actually asked for.

There are two other common threads in the Micmac's world view. Many Micmacs in the community tell of a great battle fought between them and the Maliseets at a place called Quaggy Joe Mountain, outside Presque Isle in Aroostood County. Following the battle, an alliance of sorts was formed between the tribes, which culminated in the formation of the Wabanaki Confederacy. More recently, the Micmac and Maliseet participated on a formal political level in the Association of Aroostook Indians from 1969 to 1980.

In the spring, the gathering of fiddlehead ferns is a traditional activity for the Micmacs and other tribes in Maine. Appearing in Aroostook County in April, they are one of the first wild plants to become available and are a very important symbol of the end of winter. Not surprisingly, the symbol depicting the fiddlehead design appears as the double curve motif on virtually all Micmac decorative art. Many Micmacs also use wild plants as medicines.

Micmacs take great pride in the skills of their basketmakers, and almost every Micmac family in Aroostook County has members who make baskets. For many, it is an important source of income. Knowledgeable tribal members can look at a basket and identify its maker or the family, so distinctive are the styles.

Beyond the fact that so many households have a connection to the basketmaking tradition, the way in which Micmacs produce the baskets is specific to their tribe and different from the way in which the Maliseet, Passamaquoddy and Penobscot tribes produce baskets.

The data presented above conclusively satisfy Criterion (b) of the regulations, as well as the definitions and amplifications of that criteria which have been used in recent years.

Additional support for the proposition that the Aroostook Band of Micmacs meet the standards of tribal existence comes from the similarity between their social organization and adjustments to those of the Death Valley Timbi-Sha Shoshone, a tribe acknowledged by the Department of the Interior in 1982.

The Department's experts take the position in the case of the Timbi-Sha Shoshone that, while there are gaps in the documentary evidence showing continuous political activity by tribal leaders, such political process can be inferred from the maintenance of the village (Ibid.:27). The same inference can be drawn from the extent to which the members of the Aroostook Band of Micmacs have maintained their language, their high degree of Indian blood quantum, and other aspects of their traditional culture. The Micmac political processes are virtually identical to that of the Timbi-Sha Shoshone, and beginning in the 1960's, like Timbi-Sha Shoshone, ". . . there is a fairly consistent record of spokesmen for the group (Ibid.)."

For the nearly 400 years of recorded history, the Micmacs have lived in the area that is now the State of Maine. They shared with the Maliseets a common aboriginal territory. Throughout the intervening centuries, they have continued to exploit that territory, although in different ways as technology changed. What has not changed significantly has been the lifestyle of the tribal members; they have remained a highly mobile, but closely knit community. Based upon both the review of the available sources and field research over a two year period, it is my professional opinion that the Aroostook Band of Micmacs constitutes an Indian community and a tribe.

PREPARED STATEMENT OF REED DYER AND BECCA YTURREGUI

In 1980, the Maine Indian Claims Settlement Act recognized the Penobscots, Passamaquoddies, and Maliseets as Indian tribes and granted them benefits in several forms. At that time, however, the Micmacs were not yet properly prepared to join their fellow Native Americans in court and were therefore excluded from the settlement--hence, their tragic non-recognition by the government. Congress could easily change this unfortunate situation by passing special legislation recognizing them. This legislation is U.S. Senate Bill S.1413.

The Micmacs are not asking for much. They simply want a chance to become economically self-sufficient without losing their cultural heritage. For their losses over the last 300 years, Maine's three other Indian tribes all now receive compensation. But the Micmacs, residents of our state for all of recorded history, are forced to survive on their own.

Naturally, the Micmacs do not want to give up their Indian culture, but survival for the Native Americans has not been easy. Prejudice abounds in communities with Micmac inhabitants. They have an amazingly high drop-out rate of ninety-five percent from high school, so most are poorly educated. Very few Micmacs have year-round jobs, since the majority are employed as seasonal crop pickers. The overall unemployment rate stands at 75 percent. Dependency on the agriculture of Aroostook County forces 60 percent of all Micmac families to survive on less than $5000 a year. Undoubtedly, the most frightening of these statistics is that their average life span is only 45 years. All these factors combine to trap the Micmacs in a downward spiral of low self-esteem and poverty.

In spite of the odds, however, they have reorganized themselves and banded together to fight for the recognition and services they deserve. The Micmacs rightfully believe that they should receive the same aid awarded to the Maliseets, approximately $900,000, and the same medical and housing benefits as all other tribes in Maine. With such services, the Micmacs will try to become self-sufficient and prosperous, as the other Indians have.

The Micmacs have much to contribute to Maine. The tradition of basketmaking has been handed down for generations asnd still thrives in the Indian commmunity. Also, the Micmacs take great pride in relating their traditional stories and tales. Instead of a written history, these Native Americans have a rich oral history, which they gladly share with all who are interested.

The Micmac tribe stands as a bridge between modern man and the beginnings of life in America. Clearly, the Micmacs symbolize the American ideals of endurance, hope, and pride. The loss of what these Indians have to offer would be tragic, since they ask for so little. The Micmacs only want the compensation that they deserve.

Native Americans were the sole inhabitants of this continent when Europeans arrived almost 500 years ago. These earliest peoples had already established an acceptable way of life when they suddenly had their rights to the land stripped from them by our ancestors. Still, the Micmacs did not interfere with the onslaught of white men, and they even fought alongside colonists during the American Revolution. Society now bears a moral responsibility to help these Indians, who have been oppressed for so long.

Our fellow classmates and we at Winthrop High School strongly believe that the Micmacs deserve both compensation for their loss of aboriginal territory and a chance to rebuild themselves into a strong, proud tribe. To aid them in their struggle, we formed Students Organized to Support Micmacs (SOS MICMACS) over a year ago. Almost the entire student body, over 300 students, expressed their support by writing letters to lawmakers, sponsoring a student exchange with Micmac youth, hosting an evening Celebration of Micmacs, testifying in Micmacs' behalf in Maine legislative hearings, and selling bracelets and baskets to raise money for our cause. By increasing public awareness and celebrating the fascinating culture of these people through these activities, the members of SOS MICMACS have hoped to expedite the reversal of the tribe's current situation. And even though their request may seem insignificant when compared to many other present national issues, the rectification of this wrong remains urgently important. Justice cannot wait.

With the passage of Senate Bill S.1413, this human rights inequity can be quickly corrected, and the Micmacs can feel again the pride and self-esteem that they once possessed. We urge the Committee on Indian Affairs to recommend the swift passage of this bill by the U.S. Senate. The Micmacs, the state of Maine, and our country all will reap the benefits by this action.

Ever since our fellow students and we first learned of the Indians of Maine, we have been fascinated by them. We are still amazed that in our harsh environment that they not only survived, but prospered as well. But then, with the invasion of the white man, they were pushed aside, mistreated, and forgotten, their pride and honor stripped away.

The Micmacs' name actually means "allies." We now have a perfect opportunity to truly make them our allies by helping them in their struggle to help themselves. By granting the Micmac Indians federal recognition through special legislation, we will not only corrrect an egregious error in oversight but we will also create an alliance with these people which will make both Micmacs and their fellow Americns proud. Please give serious consideration to becoming the Micmacs' allies by recognizing them for who they are--American Indians.

Respectfully submitted,

Reed Dyer

Becca Yturregui

Reed Dyer, Becca Yturregui
Co-Chairpersons, SOS MICMACS

STATEMENT BY SENATOR RICHARD SHELBY
BEFORE THE SELECT COMMITTEE ON INDIAN AFFAIRS
ON BEHALF OF THE MOWA CHOCTAW INDIANS
MARCH 28, 1990

Mr. Chairman, I appreciate this opportunity to offer testimony on behalf of the MOWA Choctaw Indians and their struggle for federal recognition.

I first introduced legislation "To Provide Federal Recognition of the MOWA Band of Choctaw Indians of Alabama" in the 100th Congress. I again introduced the bill, re-designated as S.381, in February, 1989. I believe in this legislation, Mr. Chairman, and I believe that the MOWA's have a very real case for federal recognition.

The MOWA Band of Choctaw Indians live in Southwest Alabama within the original boundary of the Choctaw Nation. Though the people have been located there for over ten generations, the name "MOWA" is recent. It is derived from the first two letters of Mobile and Washington Counties in Alabama and represents their geographic location. Their ancestors established the community in this sparsely populated area during the 1800's, just prior to the removal of the Indians from the state. The MOWA Choctaws of South Alabama are a segment of the Choctaw Indians who refused to migrate from their homeland during the infamous "Trail of Tears". They avoided removal by concealing themselves and their descendants in their efforts to achieve recognition as Indians. The tribe is officially recognized by the State of Alabama and now seeks recognition by the federal government.

The MOWA Choctaws of Alabama have lived in the same area for the past 200 hundred years. The members have been living together and functioning as a group for those 200 years. The direct ancestors of the MOWA's came together in "the Forks" between the Alabama and Tombigbee Rivers, below a stream called the "Cut-Off" which flows from the Alabama River southwest to the Tombigbee. This "Basin" area between the rivers had always been claimed by both the Choctaw and Creek Indians. To settle the dispute, the U.S. government set the watershed as the boundary line with the Creek to the east and the Choctaw to the west. The MOWA community was, and still is, on the Choctaw side of the Tombigbee River.

This MOWA area has been identified as a prehistoric Indian site by the U.S. Army Corps of Engineers in the Corps reconnaissance study made prior to the construction of the Tennessee-Tombigbee Waterway. Artifacts attest to Indian occupation long before the arrival of Europeans.

Since this early period, the MOWA Choctaw people have paid taxes, voted and served their country from the Civil War through Vietnam. However, there are still neighbors that scoff at the tribe's claim of being Indian.

Since the 1880's, the ancestors of today's MOWA's consistently sought recognition as an Indian tribe. Each time the U.S. government opened the rolls, the tribe applied -- with the Eastern Choctaw in 1887,. the Eastern Cherokees in 1907 and the Creeks in the 1950's -- finally achieving state recognition in 1979.

The goal of the MOWA's in seeking federal recognition is to preserve their community. They believe that, with a little assistance and the cooperation and good faith of their non-Indian neighbors, they can help their people improve their standard of living and maintain adequate housing. The MOWA Indians have developed a good relationship with their non-Indian neighbors. They currently serve with them in local community organizations and in positions of leadership. They have demonstrated that they can perform effectively along-side their fellow Alabamians in the schools, on the assembly line and in the boardroom.

The MOWA's plans for economic development stress the dual goals of providing employment for tribe members and utilizing their existing skills while training them for future jobs. They have no interest in 'get rich quick schemes' or those that would destroy their resources or alienate their young people. The MOWA's need the opportunities that federal recognition will provide.

The MOWA Choctaws desire the same success that has come to their cousins, the Mississippi Band of Choctaws, since that tribe gained federal recognition. The Mississippi Choctaws have made great strides in education, health care, housing and job training for their people. Their economic development is a source of pride. The establishment of a development company in 1969 paved the way for the construction of 400 new homes and the repair of another 200. The Mississippi Choctaws have been one of the largest employers in the state. With hard work, it can also happen for the MOWA's.

Even though the MOWA Choctaw Indians have had a long battle to regain their identity, the hard work of their leaders has made the effort worthwhile. They have self-respect and are proud of their heritage as native Americans. I am proud to represent them and work along side them in this struggle.

Mr. Chairman, I believe the MOWA Choctaws have presented your committee with sound evidence to support their request for federal recognition. As they are recognized by the State of Alabama, other Indian tribes and national Indian organizations as a legitimate Indian tribe, I ask that you give serious consideration to their quest. It is our duty to restore the recognition that is rightfully theirs.

TESTIMONY OF MOWA TRIBAL CHAIRMAN FRAMON WEAVER

Mr. Chairman, I am Framon Weaver, Tribal Chairman of the MOWA Band of Choctaw Indians. The State of Alabama acknowledged the Mowa Band of Choctaw Indians as an Indian Tribe in 1979. It is time for the federal government to acknowledge our tribal status.

The Treaty of Dancing Rabbit Creek guaranteed our right to remain in Alabama and still retain our citizenship in the Choctaw nation. We have remained a tribe since the 1830 treaty was signed and still live in the same geographical area in which our ancestors resided some 200 years ago. We have continually maintained our status as an Indian Tribe throughout this time.

In April 1988, our people filed a fully documented petition for federal acknowledgment. Our tribe has spent nearly ten years and has endured much financial stress while trying to finance the necessary research documentation for our tribal petition.

In February 1990 we received a letter of the obvious deficiencies. It has taken nearly two years just to get this letter. How much longer will it take to get a full review of our petition? It may take another ten years or more before we get a final decision from the department.

We feel this legislation is necessary, given the long drawn out acknowledgment process and the very difficult criteria. Many Southeastern tribes find it nearly impossible to meet this criteria.

We are asking that Congress exercise the authority given by the United States Constitution and thus give us our tribal status. We are asking that congress pass the bill introduced by Senator Shelby and Congressman Sonny Callahan. We are asking that our Choctaw citizenship, a citizenship guaranteed by the Treaty of Dancing Rabbit Creek, be honored and then recognized by Congress.

Nearly 160 years has passed since the Treaty of Dancing Rabbit Creek was signed. Many of the terms of this treaty which permitted our people to remain in Alabama have been overlooked or ignored by the Department of the Interior and by Congress. I think our unique circumstances justify immediate action by Congress.

I humbly ask this Congress to make right a 160 year old wrongful injustice that has been done to my people.

STATEMENT OF DOUGLAS L. MCCOY

I am proud and pleased to represent the MOWA Choctaw Indians in connection with S.381, the MOWA Band of Choctaw Indians Recognition Act, co-sponsored by Senators Richard Shelby and Howell Heflin. I appreciate that the Senate Select Committee on Indian Affairs held a hearing March 28, 1990 on this proposed legislation for federal acknowledgment of the MOWA Choctaws as an Indian tribe, at which hearing I made an oral presentation in support of S.381. I would also like this written statement to be made a part of the record in support of that legislation, and I would ask that the Committee receive it and add it to the other statements, testimony and documentation previously submitted by the MOWA Choctaws at this committee's hearing.

My involvement in this cause began when the MOWA Choctaws asked my law partner, former Congressman Jack Edwards, to assist them in their preparation for the S.381 hearing. In connection with that request, I had the opportunity to review in detail the proof and documentation the MOWA's have assembled to support their request for tribal recognition, as well as to meet and interview many of their tribal members. Based on that review and my knowledge of their evidence gained from that review, it is my firm opinion that the MOWA Choctaws have definitively established their entitlement to federal recognition as an Indian tribe and have established, as well, the obligation of Congress to grant them that recognition. This statement sets out some of the bases for my conclusions in these regards. At the outset of this statement, however, I would like to express my appreciation, as well as that of the MOWA Choctaws, for the efforts of Senators Shelby and Heflin on behalf of S.381. It has been my great pleasure to work with Senators Shelby and Heflin related to the MOWA Choctaw federal tribal recognition effort. Their support of the MOWA Choctaws will never be forgotten by the tribe.

I am aware of the substantial effort and sacrifice that has been required to prepare the proof that is now before you. This effort began, of course, many years ago and resulted, in the first instance, in the petition for tribal recognition that was filed by the MOWA Choctaws with the Bureau of Indian Affairs almost three years ago. The MOWA's knew, of course, that their research was not complete at the time their administrative petition was filed. However, because the BIA process for tribal recognition is so lengthy and because petitions are processed on a first-come/first-served basis, the information that was available three years ago was compiled and submitted. The MOWA Choctaws decision in this regard was, in hindsight, well considered inasmuch as it has taken the Bureau of Indian Affairs three years to make even its cursory "obvious deficiencies" review of their petition for tribal recognition. Indeed, that review may well have taken even longer if not for the pressure applied by the setting of the hearing for S.381. The MOWA Choctaws have continued their painstaking and costly research to substantiate their claim for tribal recognition during the three year interim period since their administrative petition was filed with the Bureau of Indian Affairs. In fact, this continued research has revealed additional extremely probative evidence of MOWA Choctaw continuous tribal existence; some of which evidence is now before this committee.

Obviously, the MOWA's have not submitted even a majority of their research to this Committee. In addition to what is before you, there are hundreds of hours of interviews with MOWA Choctaw elders and hundreds of pages of additional documentary evidence. Quantity of evidence, however, is not and should not be the standard. The issue is whether there is quality proof that the MOWA's presently exist and have historically existed as an Indian tribe and whether that proof supports their assertion that they should receive congressional recognition. In that regard, the most significant of the evidence developed by the MOWA research effort is outlined and reflected in the testimony and chronology of their historian Jacqueline Matte. The proof submitted to this committee includes both the evidence previously submitted to the BIA with the MOWA Choctaw administrative petition and information developed since that time which the MOWA's contend, and I believe rightfully so, answers many of the criticisms set forth in the BIA's letter of obvious deficiencies issued on February 15, 1990. Again, I submit that the information developed by the MOWA Choctaws and presented to this Committee is compelling and completely persuasive proof of their tribal status and right to congressional recognition.

I am aware, of course, that there are opponents to the MOWA Choctaws' effort to obtain tribal recognition and to S.381. I believe that this opposition, unfortunately, is motivated by the effects of the federal government's longstanding mistreatment of native Americans rather than by any genuine legitimate concern as to the MOWA Choctaws historical existence. In addition to being ineffective for considering and determining the rights of those Indian tribes that are not federally recognized, the federal government's present and historical policies for assisting recognized tribes are so inadequate that recognized tribes, out of fear of loss of economic benefits, routinely oppose the recognition of additional tribes. It is shameful that conditions created by the federal government engender division among native Americans who have traditionally been politically powerless and whose best hope for improvement of their plight is the political influence that they could exert if unified. Tribal status is a question of historical and cultural fact. It is the trust obligation of the United States government to recognize legitimate Indian tribes. Economic considerations have no place in this determination. This committee, in its consideration of the MOWA tribal recognition legislation, as well as its consideration of other Indian groups, should make this clear and do its part to discourage and eliminate the hostility and division between recognized and non-recognized Indian tribes. It is the MOWA's understandable belief that opposition to their effort to obtain tribal recognition is a direct reflection of this very problem. We all must work to gain greater aid for all Indians. We should not, however, allow the economic fears of recognized tribes to determine or deny the rights of non-recognized but legitimate Indian tribes.

Moreover, there is simply no proof to support the position of those who apparently oppose the MOWA Choctaw Tribal Recognition Act that the MOWA's are a conglomeration of various Indians and mixed bloods as opposed to a continuous tribe of Choctaw Indians. Without proof or evidence, the innuendo and insinuations of those who make this claim should be completely ignored. Indeed, contrary to this unsupported opposition position, the evidence presented by the MOWA Choctaws directly and clearly proves that they are a continuous tribe of Choctaw Indians and not a "conglomeration." The treaties entered by the United States with Indians who resided in what is now Mississippi and southwest Alabama in the early 1800's, as cited in Ms. Matte's history, whose Indian signors can be traced back as direct ancestors of present day MOWA tribal members, were treaties between the United States and Choctaw Indians as evidenced by their titles. It is, accordingly, indisputable that a tribe of Choctaw Indians lived in exactly the same geographical area as is inhabited by the present day MOWA Choctaw band and that the Choctaw Indians who lived in this area at the time of first European contact are direct ancestors of the present day MOWA tribe. Treaties signed in 1801, 1802, 1803, 1805, 1816, 1820, 1825 and 1830 were all Choctaw treaties and were all signed or witnessed by MOWA Choctaw ancestors who at the time lived in southwest Alabama in the same geographic area occupied by the present day MOWA Choctaw tribe. That this Alabama Choctaw tribal community continued to exist into the twentieth century is evidenced by other historical documentation. In 1847, the Alabama Choctaws were specifically recognized as a "distinct and independent community" by the Alabama Supreme Court in the published case of Wall v. Williams, 11 Ala. 826 (1847). In that case, the Alabama Supreme Court discussed an act of the Alabama legislature which abolished the laws, usages and customs of the Creek and Cherokee Indians which were contrary to the constitution and laws of Alabama. The Court recognized, however, that pursuant to the Treaty of Dancing Rabbit Creek, the Alabama Choctaw Indians maintained their sovereign rights as a tribe at that time and for "so long as they continue[d] a distinct and independent community." Id. at 838. Further, reports in Alabama newspapers, including the Daily Register of Mobile in 1897 and the Birmingham News in 1927, acknowledged the existence of Choctaw Indians in southwest Alabama. (See testimony of Jacqueline Matte). This clear and unequivocal documentary evidence proves the continuous existence of the MOWA Choctaw community as is required for tribal recognition and dispels the unfounded assertion that the MOWA's are a "conglomeration" of various tribes and races. If, as the MOWA's detractors apparently claim, all of the Alabama Choctaws were removed west after the Treaty of 1830, then why does the Alabama Supreme Court, and the local newspapers of the time continue to recognize a "community" of south Alabama Choctaws in 1847, 1897 and 1927? The MOWA Choctaw genealogies also, of course, prove the continuity of their Indian society.

The MOWA evidence in support of their contention that they are entitled to congressional, as opposed to administrative, recognition is also, I submit, compelling and persuasive. The MOWA's have established that they are direct descendants of the Choctaw tribe which inhabited southwest Alabama and was recognized in a series of treaties with the United States in the early 1800's. The last of these treaties, of course, was the Treaty of Dancing Rabbit Creek entered in 1830 by which the Choctaw tribes of the Mississippi territory (which included present day southwest Alabama) were guaranteed the right to remain in their native homeland and to maintain their rights as Choctaw tribal members if they chose to remain. The MOWA Choctaws have proved that they are the direct descendants of those to whom these rights were guaranteed. Congress has never taken away the rights of the Alabama Choctaws as an Indian tribe. It has simply failed to fulfill its obligation to administer those rights. The failures of Congress in this regard include the appointment of an incompetent agent to register the Choctaws who remained in Alabama following the Treaty of 1830. In addition, in the late 1800's, when Congress finally conceded the ineptness of its agent Ward, it appointed the Dawes Commission which again breached the duty of the federal government to the Alabama Choctaws. Although appointed to finally administer the rights owed to the Alabama and Mississippi Choctaws under the Treaty of Dancing Rabbit Creek, the Dawes Commission inappropriately, and based on completely irrelevant economic considerations, refused to recognize any except full-blood Choctaws. This standard, of course, ignored historical reality and was imposed merely to permit the federal government to again avoid its obligations.

Until recently, the Alabama Choctaws had neither the resources nor the ability to demand that their rights be acknowledged. Their rights arise, of course, pursuant to treaty. Congress has the sole obligation and responsibility for the fulfillment of treaties. Now that the MOWA Choctaws have established their entitlement under the Treaty of Dancing Rabbit Creek, Congress must finally act to administer their rights. Indeed, as the MOWA Choctaws pointed out in their hearing presentation to this Committee, the misdeeds of the past by Congress' agents and commissions may well hinder or even result in the denial of the MOWA's administrative petition. The BIA could take the position that Congress has twice in the past given the MOWA's an opportunity to register for the rights they presently seek and that their failure to do so belies their current contention that they are entitled to those rights. Congress must, therefore, acknowledge the errors and omissions of its past treatment of these people, and afford the MOWA Choctaws the rights and recognition to which they have long been entitled.

Additionally, the MOWA Choctaws should receive congressional attention because Congress' past inattention created a historical environment which has proved to be a substantial hindrance to their effort to provide the "proof" of tribal existence demanded by the BIA. In this regard, although the MOWA Choctaw research effort has developed substantial and what should be clearly sufficient proof to entitle them to federal tribal recognition under any reasonable standard, the BIA has indicated an intention to ignore historical reality in the application of its recognition criteria and refuse to recognize the MOWA Choctaws by unrealistically applying that criteria.

It is the opinion of experts who have worked with the branch of acknowledgement and research of the BIA over time that the work load and costs for petitioners under the administrative process for tribal recognition has greatly increased and that different treatments for different petitioners occurs. These problems were recognized and confirmed in the testimony of Bud Shepherd, who wrote the BIA criteria which is now applied for tribal recognition petitions, and who testified before this Committee on the same date the MOWA Recognition Act was considered. Eastern Indians, and the MOWA Choctaws in particular, have existed in an environment, since the early 1800's, of prejudice and oppression. The MOWA Choctaws, during their history, have been discriminated against and even punished if they attempted to do anything other than to comply with the societal standards of the white community. This historical environment resulted, in large part, from the failure of the federal government to afford the benefits and rights to these Indians that have long been owed to them.

Indeed, it is extremely ironic that these Indians must now attempt to prove and document their history to a society that did what it could to ensure that they would not have any history. In light of their environment, it was necessary, if not essential, for the MOWA Choctaws to "hide" their Indian identity. This, of course, had the consequence of eliminating any possibility of extensive "independent" documentary proof of the continuous existence of their community. In spite of this history, the BIA, as evidenced by its letter of obvious deficiencies, continues to demand extensive documentary proof of overt expression by the MOWA Choctaws during their history of their Indian identity and Indian community. The BIA's position in this regard, obviously, ignores historical reality.

This does not mean, of course, that the MOWA Choctaws have abandoned their Indian heritage. Indeed, they have not done so and their elders have testified to this fact. They have simply isolated themselves in order to preserve their culture. As explained in testimony presented to this Committee, the MOWA Choctaws have labored tirelessly to preserve their history and to ensure that it is carried forward to future generations. The MOWA Choctaws have now, and have historically had, a strong sense and practice of history, culture and community. The Congress owes a duty to the MOWA's to assist them in the preservation of their history, their culture and their community.

In sum, the MOWA Choctaws have clearly established themselves as an Indian tribe which has existed continuously dating back to the period of first European contact with the area of southwest Alabama. The proof of their historical and continuous tribal existence will satisfy any reasonable criteria. There is, however, no guarantee that the BIA criteria will be applied to the MOWA's in a "reasonable" manner. Congress must therefore step in, admit its past mistakes and omissions, and take responsibility where the MOWA's are concerned. These proud people have suffered at the hands of white society for too long and are in danger of losing their heritage altogether if they do not receive federal assistance. As their historian Jacqueline Matte has pointed out, only five of the fifteen elders interviewed between 1982 and 1986 for support of the MOWA administrative petition for tribal recognition are still living. Congress must not let this Indian tribe and its heritage die along with these elders.

I greatly appreciate the opportunity of presenting this statement in support of the MOWA Choctaws. In the strongest terms possible, I urge this committee to support the MOWA Band of Choctaw Indians Recognition Act to the full Senate with a favorable recommendation.

TESTIMONY OF MARSHALL PRICHARD
Chairman
Northern Ponca Restoration Committee
Regarding S. 1747
Before the Senate Select Committee on Indian Affairs
March 28, 1989

Good afternoon, Mr. Chairman and members of the Senate Select Committee on Indian Affairs. My name is Marshall Prichard. I currently serve as the Chairman of the Northern Ponca Restoration Committee. I would like to thank the Chairman of the Select Committee for his undaunted support of Indian rights in our Nation. I would also like to thank Senator James Exon for introducing S. 1747 and Senator Robert Kerrey for his continued support.

In the way of background, my family appears on the final Northern Ponca roll, which was compiled by the B.I.A. in 1965. I am a direct descendant of Smokemaker who also testified before the United States Senate on relations between the U.S. government and the Ponca Tribe. I was raised on the Yankton and Oglala Sioux Indian Reservations in South Dakota. I have been involved in a variety of activities in Indian Country as an adult, including service as Director of the Lincoln, Nebraska Indian Center, Chairman of the Nebraska Indian Commission and Project Leader with the John Hay Whitney Foundation for the Nebraska Indian Economic Development Project.

In our appearance today, we are requesting that the Senate Select Committee act favorably on our Tribe's restoration bill, S. 1747. In our written testimony, you will read stories of

Indian people who find themselves trapped in a sort of no-mans land .... neither Indian nor white. Last year, this Committee formally repudiated the Federal termination policy. Today, we are before you as one of the last of the terminated Tribes seeking restoration. In our appearance today, we seek to continue a relationship that dates back to our first Treaty with the United States in 1817. Four additional Treaties followed, the last being in 1865. At that time, our lands had been reduced from several million acres to 98,000 acres. Through a major blunder, our land was later given to the Great Sioux Nation in the 1868 Fort Laramie Treaty. Nine years later, our people were forced to go to Oklahoma Indian Country. That forced relocation march is now remembered by our people as the Ponca Trail of Tears. When the journey was completed, clearly one third of our people had died.

Despite that, many of our people found relocation unacceptable, and against heavy odds, followed our great Chief Standing Bear on a difficult trip back to our ancestral homeland along the Niobrara River in Nebraska. While many of the Ponca people stayed behind in Oklahoma, those of us who returned to our homeland succeeded in reasserting our rights in our original reservation and maintaining Federal recognition as the Northern Ponca Tribe up until our termination in 1962.

S. 1747 would restore rights to the Tribe that existed prior to termination; would allow for the provision of services to Tribal members; would define a procedure for development of an accurate membership roll; would provide for the adoption of a Tribal constitution and bylaws. And finally, S. 1747 calls for the development of a Tribal Economic Development Plan within two years from enactment. But most of all, even though it is not written in the bill, S. 1747 provides new hope and a better future for the Ponca people.

In conclusion, I would like to thank members of the Committee and staff for this opportunity to testify in behalf of S. 1747. I ask for your support.

Thank you.

TESTIMONY OF FRED LEROY

Project Coordinator, Ponca Tribe of Nebraska
in support of S. 1747
Before the Senate Select Committee on Indian Affairs
March 28, 1990

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE:

My name is Fred LeRoy, currently Project Coordinator for the Northern Ponca Restoration Committee.

I am on the last 1962 Northern Ponca Tribal Roll, a Vietnam veteran having served in the U.S. Marine Corps, and a great grandson of Black Eagle who served as an Indian Scout in the Civil War. I am honored to be here.

During the last 28 years, the Northern Ponca Tribe has been faced with many problems caused by Federal termination. Termination was supposed to bring prosperity and freedom to our Tribe; instead it has brought hardship and despair: our people do not receive health care services, higher eduction or employment assistance, housing benefits, nor are we eligible to bid on economic development contracts reserved for minorities as other Tribes are. These are just a few of the many examples of how our Tribe has been discriminated against since the termination.

Loss of Federal recognition has not only affected the Tribe in Federal services and benefits, but has also resulted in a decline of our Tribe's culture and traditions.

In the History, Socio-Economic Report completed by Professor Grobsmith, Associate Professor at the University of Nebraska, Lincoln, it details the current and past problems of the Tribal members and also provides documentation on how we fulfill the Administration's criteria for Federal recognition. I would like to briefly summarize on how we meet those criteria.

As background, the Ponca Tribe was a Federally recognized Tribe up until the termination in 1962. The Poncas had four treaties ratified by the U.S. Congress. We have resided in Northeastern Nebraska as a community of Native Americans for as long as we can remember. We practiced then, and continue to practice our traditions and customs.

The six criteria are as follow:

Criteria 1. There exists an on-going, identifiable community of Indians who are members of our formerly recognized Tribe or who are their descendants. (The Ponca Tribal members continue to live in the aboriginal lands of the Ponca Tribe. We are recognized by the State of Nebraska and the three Federally recognized Tribes in Nebraska as the Ponca Tribe.)

Criteria 2. A majority of today's Tribal members live in the vicinity of the former reservation on aboriginal Ponca lands.

Criteria 3. The Tribe has continued to perform self-governing functions either through elected representatives or in meetings of our general membership. (In 1962, immediately following termination, a Ponca Tribal Cemetery Committee was formed to continue Tribal functions. The Ponca Tribe was incorporated in 1971 to seek Federal recognition. During the last twenty years, Tribal meetings have been held and representatives elected to maintain our community ties and for our restoration effort.)

Criteria 4. There is widespread use of our aboriginal language, customs and culture. (The termination of the Tribe did not stop the members from continuing their customs, sundance, vision quest, singing, and dancing.)

Criteria 5. There has been a marked deterioration in our social-economic conditions since termination. (The Poncas have a 57% unemployment rate compared to a Nebraska unemployment rate of 3%. 31% of the Poncas live below the poverty level compared to 10% of all Nebraskans.

Criteria 6. Our conditions are more severe than in adjacent rural areas or in comparable areas within the State. (The Ponca Tribal members have higher rates of unemployment, poor housing, and inadequate health care whether in urban or rural areas.)

I conclude my testimony today by thanking the Select Committee and all the staff for giving me the opportunity to testify on this very important bill.

Thank you.

LETTERS OF SUPPORT

- Nebraska Unicameral Legislative Resolution # 428
- Bureau of Indian Affairs Aberdeen, South Dakota
- Ponca Tribe of Oklahoma
- Omaha Tribe of Nebraska
- Winnebago Tribe of Nebraska
- Santee Sioux Tribe of Nebraska
- Nebraska Indian Commission
- Village Board of Trustees of Niobrara, Nebraska
- Nebraska Department of Social Services
- Oregon Legal Services Corporation
- University of Nebraska Law Department
- Omaha Nebraska Public Schools
- United Methodist Ministries
- First Presbyterian Church
- Metropolitan Community College of Omaha, Nebraska
- Nebraska Indian Child and Family Consortium
- St. Martin De Porres Center
- Chicano Awareness Center
- Native American Community Development Corporation
- Lincoln Indian Center

Nebraska Unicameral
Legislature

PATRICK J. O'DONNELL
Clerk of the Legislature
Room 2018
Phone (402) 471-2271

RICHARD BROWN
Assistant Clerk of the Legislature
Room 2014
Phone (402) 471-2429

April 12, 1988

Mr. Fred LeRoy, Chairman
Northern Ponca Restoration Committee, Inc.
2226 Leavenworth Street
Omaha, NE 68102

Dear Mr. LeRoy:

Enclosed is a copy of engrossed Legislative Resolution No. 428 which was adopted by the Nebraska Unicameral on the eighth day of April, 1988. The members of the Nebraska Legislature have directed me to forward this information to you.

Please feel free to contact me should you have any questions or comments.

With kind regards.

Sincerely,

Patrick J. O'Donnell
Clerk of the Legislature

PJO:r

Enc.

NINETIETH LEGISLATURE
STATE CAPITOL, LINCOLN, NEBRASKA 68509

LEGISLATIVE RESOLUTION 428

Introduced by Marsh, 29; Schmit, 23; Conway, 17;
Hefner, 19; Labedz, 5; Nelson, 35;
Johanns, 27

WHEREAS, the Ponca Tribe of Nebraska was terminated by an Act of Congress, P.L. 87-629, on September 5, 1962; and

WHEREAS, former members of the Ponca Tribe of Nebraska are not eligible for and do not receive any federal services in housing, health care, employment, child welfare, and education, otherwise provided to federally recognized Indians; and

WHEREAS, former members of the Ponca Tribe of Nebraska are not defined as Indians by the federal government; and

WHEREAS, the Northern Ponca Restoration Committee, Inc., was incorporated in the State of Nebraska on August 19, 1987, to promote the federal restoration of the Ponca Tribe of Nebraska and its members; and

WHEREAS, the Northern Ponca Restoration Committee, Inc., will seek to acquire and provide federal services to former members of the Ponca Tribe of

Nebraska in housing, health care, employment, child welfare, and education; and

WHEREAS, Ponca tribal members have played a historical role throughout Nebraska's history; and

WHEREAS, the trial of Chief Standing Bear established by law that Indians were persons.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NINETIETH LEGISLATURE OF NEBRASKA, SECOND SESSION:

1. That the Legislature recognizes all former members of the Ponca Tribe of Nebraska as duly state recognized Indians.

2. That the Legislature extends its recognition to the Ponca Tribe of Nebraska.

3. That the Legislature fully supports the Ponca Tribe's endeavors to achieve federal restoration.

4. That a copy of this resolution be sent to the Northern Ponca Tribe of Nebraska Restoration Committee, Inc., in care of Mr. Fred LeRoy, Chairman of the Northern Ponca Restoration Committee, Inc. and Ms. Rose Haines, Vice-Chairperson of the Northern Ponca Restoration Committee, Inc., 2226 Leavenworth Street, Omaha, NE 68102.

Bill Barrett

PRESIDENT OF THE LEGISLATURE

I, Patrick J. O'Donnell, hereby certify that the foregoing is a true and correct copy of Legislative Resolution 428, which was passed by the Legislature of Nebraska in Ninetieth Legislature, Second Session, on the eighth day of April, 1988.

CLERK OF THE LEGISLATURE

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
ABERDEEN AREA OFFICE
115 FOURTH AVENUE S.E.
ABERDEEN, SOUTH DAKOTA 57401

IN REPLY REFER TO:
Aberdeen Tribal Government Services

JAN [illegible] 1990

Mrs. Gloria Chytka
RR #1, Box 31
Lake Andes, South Dakota 57356

Dear Mrs. Chytka:

This is a follow up to your visit to this office on October 28, 1989, wherein we discussed the "Ponca Restoration Act" introduced by the Honorable Senator Exon from Nebraska.

Our office receives numerous calls each year requesting services from either those who were terminated or their children. It makes no sense to withhold services based on the results of the legislation or policies created by the "termination era".

This office is in support of the restoration of the Ponca Tribe of Nebraska and you may use this as a letter of support in your efforts to accomplish this.

Sincerely,

Jerry L. Jaeger
Area Director

Ponca Tribe of Oklahoma

Box 2, White Eagle ♦♦ (405) 762-8104 ♦♦ Ponca City, Oklahoma 74601
Ext. ______

June 23, 1987

Mr. Fred LeRoy
2226 Eleven Worth
Omaha, NE 68105

Dear Mr. LeRoy:

We regret the delay in sending this resolution that you requested, but please find enclosed a xerox copy of the resolution of support from the Ponca Tribe of Oklahoma.

As soon as the original resolution has been located, we will send it to you. Thank you for your patience and understanding.

Sincerely,

Eugene Brown Sr.
Eugene Brown, Vice-Chairperson
Ponca Tribal Business Committee

EBSR./rr

cc: PTBC FILE
File

Ponca Tribe of Oklahoma

Box 2, White Eagle ♦♦ (405) 762-8104 ♦♦ Ponca City, Oklahoma 74601
Ext. ________

RESOLUTION

NO. 34, FY'87

"The Ponca Tribe of Oklahoma's Support for the Federal and State Recognition and Reorganization of the Northern Ponca Tribe of Nebraska."

WHEREAS: The Ponca Tribal Business Committee is authorized to conduct and transact all the business of the Ponca Tribe of Oklahoma under the aegis of the Constitution and Bylaws ratified on September 20, 1950, and

WHEREAS: The Northern Ponca Tribe of Nebraska was terminated by the federal government on September 5, 1962 under P.L. 87-629, and

WHEREAS: Former members and their descendants of the Northern Ponca Tribe are not presently defined as "Indians" by the State of Nebraska or the federal government, and

WHEREAS: The descendants of the terminated Northern Ponca Tribe do not presently receive any health care, educational benefits, employment services, alcoholism services, Indian child welfare services, (et. al.) which are provided to other Native American tribes, and

WHEREAS: The Northern Ponca Restoration Committee is a nonprofit corporation in the State of Nebraska incorporated for the purpose of initiating and implementing efforts at restoring the Northern Ponca Tribe as a State and Federally recognized tribe, so

THEREFORE BE IT RESOLVED that the Ponca Tribe of Oklahoma hereby officially supports the full restoration of the Northern Ponca Tribe of Nebraska to state and federal status, and

BE IT FINALLY RESOLVED that the Ponca Tribe of Oklahoma assures the Northern Ponca Restoration Committee that it will provide whatever services are requested to assist in the restoration, subject to the laws of the State of Nebraska.

P.T.'s Support Resol. for N. Ponca's (Cont'd.) NO.34,FY'87

CERTIFICATION

We, the undersigned, hereby certify that the foregoing resolution was presented and approved by the Ponca Tribal Business Committee at an official meeting on JUNE 3rd, 1987 in which a quorum was present and a vote cast in favor of 7 FOR; 0 AGAINST; 0 ABSENT; and 0 ABSTAINED.

Cynthia Stoner
Cynthia Stoner, Chairperson

Eugene Brown Sr.
Eugene Brown, Sr., Vice-Chairperson

Vanessa M. Wilson
Vanessa M. Wilson, Secre./Treasurer

Ledavie A. Rhodd
Ledavie A. Rhodd, Member

Bronson Roughface Sr.
Bronson Roughface, Sr., Member

Vernon S Rhodd
Vernon Rhodd, Sr., Member

John L Williams
John L. Williams, Sr., Member

OMAHA TRIBE OF NEBRASKA

P. O. Box 368
Macy, Nebraska 68039

EXECUTIVE OFFICERS
DORAN L. MORRIS, CHAIRMAN
WYNEMA E. MORRIS, VICE CHAIRMAN
MILTON OSCAR LOVEJOY, TREASURER
NATE J. PARKER SR., SECRETARY

Phone (402) 837-5391

MEMBERS
EDWARD W. WEBSTER
FORREST "J. C." ALDRICH SR.
JOHN MILLER

May 6, 1988

Chairman
Northern Ponca Restoration Inc.
2226 Leavenworth St.
Omaha, Nebraska 68102

Dear Chairman and Board Members:

Congratulations!

I was very excited to hear about the recent passage of LB-Resolution 428. I am in total support of your endeavors and as one Council Member of the Omaha Tribal Council, I offer any assistance to the cause. Please feel free to call.

Take Care and Good Luck!

I Remain,

sincerely,

Edward W. Webster
Council Member

eww/dml

RESOLUTION
# of the
WINNEBAGO TRIBE OF NEBRASKA

Resolution #87-92

WHEREAS, the Winnebago Tribe of Nebraska is a Federally Recognized Indian Tribe organized pursuant to Section 16 of the Act of June 18, 1934 (48 Stat 984) (25 USC 476) as amended by the Act of June 15, 1935 (49 Stat 378), and

WHEREAS, the Northern Ponca Tribe of Nebraska was terminated by the federal government on September 5, 1962, under P.L. 87-629, and

WHEREAS, former members and their descendants of the Northern Ponca Tribe are not presently defined as "Indians" by the State of Nebraska or the Federal Government, and

WHEREAS, the descendants of the terminated Northern Ponca do not presently receive any health care, educational benefits, employment services, alcoholism services, and Indian child welfare services provided to other Native American tribes, and

WHEREAS, the Northern Ponca Restoration Committee, is a non-profit corporation in the State of Nebraska incorporated for the purpose of initiating and implementing efforts at restoring the Northern Ponca Tribe as a State and Federally recognized tribe.

NOW, THEREFORE BE IT RESOLVED, that the Winnebago Tribe of Nebraska, hereby officially supports the full Restoration of the Northern Ponca Tribe to State and Federal Status, and

BE IT FURTHER RESOLVED, that the Winnebago Tribe of Nebraska, assures the Northern Ponca Restoration Committee that it will provide whatever services are requested to assist in the restoration, subject to the laws of the State of Nebraska.

CERTIFICATION

We, the undersigned officers of the Winnebago Tribal Council, certify that on the 23rd day of April, 1987, at a meeting duly convened, the Winnebago Tribal Council voted to adopt the above resolution by a vote of 5 for, and 0 against, with 0 abstentions.

DATED THIS 23RD DAY OF APRIL, 1987.

John Blackhawk - for
CHAIRMAN, Winnebago Tribal Council

SECRETARY, Winnebago Tribal Council

ATTEST:

SUPERINTENDENT, Winnebago Agency

8/24/88 Res. 87-31 unsig.
Returned to Tribe for
tribal offcs signat.

SANTEE SIOUX TRIBE OF NEBRASKA
Phone: (402) 857-3302
Route #2
Niobrara, Nebraska 68760

RECEIVED
'88 AUG 17 AM 8 56
B.I.A. - WINNEBAGO AGENCY
WINNEBAGO, NEBRASKA 68071

June 23, 1988

Jeannie French
Winnebago Agency
Winnebago, Nebraska 68071

Jeannie:

This Resolution 87-31 was approved last year at the April 21, 1987 Tribal Council Meeting. It has been way over a Year, but this was never put on paper until now. Can this be included in the FY 87 Resolution File.

Any questions, do not hesitate to call me.

Thanks,

Kim Keeble

Kim Keeble, Council Member
Santee Sioux Tribe of Nebraska

RECEIVED
'88 JUN 24 AM 9 53
B.I.A. - WINNEBAGO AGENCY
WINNEBAGO, NEBRASKA 68071

Reservation Programs

August 17, 1988

Mr. Donald LaPointe, Chairman
Santee Sioux Tribe of Nebraska
Santee Route
Niobrara, Nebraska 68760

Dear Mr. LaPointe:

Enclosed is the original of the Santee Sioux Tribe of Nebraska's Resolution No. 87-31. No further action is required of the Bureau of Indian Affairs. We have registered this Resolution in our FY 87 Resolution Log and acknowledged August 17, 1988 as the receiving date.

A copy of the Resolution is being retained in our files and a copy has been forwarded to our Area Office for informational purposes.

Sincerely,

Acting Superintendent

Enclosure

cc: Assistant Area Director, Indian Programs, AAO
Attn: Tribal Government Services w/attmts. Code [illegible]04

bcc: Resolution log w/att. (copy of Res. 87-31)
Chrono

GJFRENCH:gjf
RESOLUTIONS:SST8731 on 88 & 89 Res. Disk

RESOLUTION NO.# 87-31 .

RESOLUTION
OF THE
SANTEE SIOUX TRIBE OF NEBRASKA

WHEREAS, the Santee Sioux Tribe of Nebraska is a Federal Corporation chartered under the Act of June 18, 1934, (48 Stat. 984), as amended, and

WHEREAS, the Northern Ponca Tribe of Nebraska was terminated by the Federal Government on September 5, 1962 under Public Law 87-629, and

WHEREAS, former members and their descendants of the Northern Ponca Tribe are not presently defined as, "Indians," by the State of Nebraska or the Federal Government, and

WHEREAS, the descendants of the terminated Northern Ponca Tribe do not presently receive any Health Care, Educational Benefits, Employment Services, Alcoholism Services or Indian Child Welfare Services provided to other Native American Tribes, and

WHEREAS, the Northern Ponca Reservation Committee is a non-profit Corporation in the State of Nebraska, incorporated for the purpose of initiating and implementing efforts at restoring the Northern Ponca Tribe as a State and Federally Recognized Tribe, now

THEREFORE BE IT RESOLVED, that the Santee Sioux Tribe of Nebraska hereby officially supports the full Restoration of the Northern Ponca Tribe to State and Federal Status/Law.

CERTIFICATION

This is to certify that the foregoing Resolution was considered at a Meeting of the Tribal Council of the Santee Sioux Tribe of Nebraska held on the 21st day of April, 1987, and was adopted by a vote of 6 FOR; 0 OPPOSED; and 2 NOT VOTING.

Dated this 23rd day of June, 1988.

Dan Denney
Daniel Denney, Treasurer

Don LaPointe, Chairman

Larry J Burr, Acting
for Don Whitener, Agency Superintendent

RECEIVED
'88 JUN 24 AM 9 53
B.I.A. - WINNEBAGO AGENCY
WINNEBAGO, NEBRASKA 68071

RECEIVED
'88 AUG 17 AM 9 15
B.I.A. - WINNEBAGO AGENCY
WINNEBAGO, NEBRASKA 68071

STATE OF NEBRASKA
NEBRASKA INDIAN COMMISSION

KAY A. ORR
GOVERNOR

March 22, 1990

Senator Inouye
Chairman
Senate Select Committee
on Indian Affairs
Room 838
Hart Building
Washington, D.C. 20510

Dear Senator Inouye:

The Nebraska Indian Commission would like to go on record in support of Senate Bill 1747, Ponca Restoration Act. During the last five (5) years the Nebraska Indian Commission has worked with the Northern Ponca Restoration Committee to achieve State recognition from the Nebraska Unicameral and to support their efforts to regain Federal recognition.

The Nebraska Indian Commission is made up of representatives from the three (3) Federally recognized Tribes in Nebraska, Omaha, Winnebago and Santee Sioux, who have all supported the Poncas in their endeavors to become Federally recognized American Indians.

In conclusion, we hope that you will give favorable recommendation to Senate Bill 1747.

Sincerely,

Keith Chamberlain

Keith Chamberlain
Chairman
Nebraska Indian Commission

BOX 94981, LINCOLN, NEBRASKA 68509-4981, PHONE (402) 471-3476
AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

RESOLUTION NO. 1989-2

BE IT HEREBY RESOLVED, that the Village Board of Trustees of the Village of Niobrara supports the efforts of the Northern Ponca Tribe in their efforts to gain "Federal Restoration" as an Indian Tribe.

Passed and approved this 6th day of June, 1989.

Stanley O. Dryak
Stanley O. Dryak, Chairman
Village Board of Trustees

ATTEST: Robert L. Olson
Robert L. Olson
Village Clerk

STATE OF NEBRASKA

DEPARTMENT OF SOCIAL SERVICES

KAY A. ORR
GOVERNOR

KERMIT R. McMURRY
DIRECTOR

September 27, 1989

Mr. Timothy Wapato, Commissioner
OHDS for Native Americans
Washington, DC 20201

RE: Grant Initiative by Northern Ponca Restoration Committee, Inc.
of Nebraska

Dear Mr. Wapato:

As an attorney working in the field of Indian child welfare in Nebraska, I want to offer my complete support to the current grant proposal by the Northern Ponca Committee for a three-year government and economic development grant.

I have been working in the field of Indian child welfare for over three years in Nebraska. During this time, I have worked with members of the Northern Ponca group, especially Mr. Fred LeRoy, and know their dedication, initiative, and insightfulness in their efforts to become a restored federally recognized tribe. The grant proposal under consideration at this time will provide the Northern Poncas the financial support to continue their efforts and develop governments, infrastructure, and an economic development plan to further support and strengthen their people.

In my work with Indian child welfare, one of the basic foundations of all human life is the family. Many families of the Northern Poncas are struggling and as a result, a disproportionate number of their members end up in the child welfare system. The grant proposal would enable the leaders of the Northern Poncas to fulfill their dreams in providing a structure and an innovative economic development plan which would impact many of these families.

I urge you to fund this proposal.

Sincerely,

Debora Brownyard

Debora Brownyard, Attorney
Indian Child Welfare Project
Human Services Division

RR92701

P.O. BOX 95026, LINCOLN, NEBRASKA 68509-5026, PHONE (402) 471-3121
AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

Native American Program
OREGON LEGAL SERVICES CORPORATION

917 S.W. Oak, Suite 410
Portland, OR 97205
(503) 223-9483

October 6, 1988

William Lynn Engles,Commissioner
U.S. Dept. of Health & Human Services
Office of Human Development Services
Administration for Native Americans
Washington, D.C. 20201

Re: Northern Ponca ANA grant proposal

Dear Commissioner Engles:

This letter is to give my unqualified support for funding of the Northern Ponca Tribe's 1988-91 ANA grant proposal. The Northern Poncas are one of the few remaining terminated tribes and the only one in Nebraska. I am acquainted with their restoration efforts. They are proceeding on a sound course.

Despite all of their efforts, the Tribe needs the funding that ANA can provide. As you know, our firm has represented several terminated Tribes in Oregon. None of these tribes would have been able to develop the evidence needed to obtain restoration without ANA help. None could have staffed their restoration efforts or proceeded with basic gouvernment development without ANA help.

With ANA's assistance, the Northern Poncas can lay the groundwork for restoration bill introduction and achieve restoration in the 101st Congress. I urge you to favorably consider their proposal and, once again, throw ANA's support behind restoring the government-to-government relationship that is Indian people's right.

Sincerely,

Michael D. Mason

Michael D. Mason
Attorney

MDM:hsm

JAMES A. LAKE. SR.
ATTORNEY AT LAW
4600 BRYAN CIRCLE
LINCOLN. NEBRASKA 68506

PHONE 488-6385
AREA CODE 402

October4, 1988

TO WHOM IT MAY CONCERN:

I write this note to add my support to the efforts of the Northern Ponca Restoration Committee to effect a restoration of federal recognition of the Northern Ponca Tribe.

I am an attorney and a Professor of Law at the University of Nebraska College of Law (having taught there 40 years, this year) where I now teach a Seminar on Indian Law. I have offered my services, free of charge, to those who during the past several years have worked for restoration. I have found these people highly motivated and very serious about achieving restoration and federal recognition of the Northern Ponca Tribe. They greatly desire to preserve their tribal culture for generations of Ponca Indians yet to be born.

I believe now most people agree that termination was not a wise policy, and many of the terminated tribes have been restored to their pre-termination status.

I urge you to do anything you can to assist the Northern Poncas to achieve their goal.

Sincerely,

James A. Lake, Sr.
James A. Lake. Sr.
Professor of Law
University of Nebraska

JL:s

Omaha Public Schools

OFFICE OF INDIAN EDUCATION
3230 BURT STREET
OMAHA, NEBRASKA 68131
(402) 554-6207

October 12, 1988

Mr. William Engles
Commissioner of Health-Human Services
Administration for Native Americans
Washington, D.C.

Dear Mr. Engles:

This letter is intended as support documentation for the Northern Ponca Restoration efforts. The Indian Education Office with the Omaha Public Schools provides supplemental academic services to Indian students.

In general terms, these Indian youngsters must prove that they are a member of an Indian tribe or organized group of Indians or that they are a descendant, in the first or second degree, before they can be served. The Northern Ponca Indian children have limited access to supplemental educational services available to them because of their tribal status. A prime example of the limited access is in the area of higher education money. The Northern Ponca Indian students are ineligible for federal higher education funds which have been set aside for Indian students.

The Northern Poncas have limited access to a number of services, but they also have been denied services because they are not recognized by the Secretary of the Interior as being Indian. I believe this limits their ability to be full productive citizens. When this happens we all lose.

I support any efforts to increase the level of services, especially educational, to Northern Poncas.

Sincerely,

Mary S Hall

Mary S. Hall, Ed.D
Project Coordinator
Office of Indian Education

RESOLUTION

RE: Federal/State Recognition of the Northern Ponca Tribe

WHEREAS The Northern Ponca Tribe was terminated by the federal government in 1962; and

WHEREAS Former members and their descendants of the Northern Ponca Tribe are not defined as "Indians" by federal and state governments; and

WHEREAS The descendants of the former Northern Ponca Tribe do not receive any health, educational, employment, alcoholism, and child welfare services reserved for other Native American Tribes; and

WHEREAS The Northern Ponca Restoration Committee, is a non-profit corporation in the State of Nebraska; and

WHEREAS They have incorporated for the purpose of initiating efforts at restoring the Northern Poncas as a State and Federally Recognized Tribe; and

THEREFORE BE IT RESOLVED that United Ministries of N.E. Omaha, Inc. hereby support and voice their concerns for the Restoration of the Northern Ponca Tribe to State and Federal Status.

BE IT FINALLY RESOLVED that the Northern Ponca Restoration Committee assures all concerned parties that they are willing to establish working relationships in order to restore the Northern Ponca Tribe to State and Federal Status.

CERTIFICATION

We, the undersigned, hereby certify that the above Resolution was adopted by United Ministries of N.E. Omaha Executive Committee, on May 7 ________________, 1987.

Raymond W. Simpson
Certifying Official

Ruth A. Kruse
Certifying Official

First Presbyterian Church
CHARLES R. PLANT, PASTOR

5th and OLIVE AVENUE
HEBRON, NEBRASKA 68370
TELEPHONE: MANSE 768-6192 STUDY 768-6760

Congressman Doug Bereuter
House of Representatives
2446 Rayburn House Office Bldg.
Washington DC 20515

March 9, 1989

Dear Congressman Bereuter:

I encourage you to introduce the bill that has been suggested by the Northern Ponca Restoration Committee, that will return Federal Recognition to the Ponca Tribe and its members.

It is my understanding that such recognition has already been given by the Nebraska legislature and I would hope that you would carry this recognition to the federal level.

The Presbytery committee that I chair has supported this effort and it would be helpful for our work to know your intentions concerning this bill and when you plan to introduce it.

Thank you for your attention to this matter and we look forward to your support for these people.

Sincerely,

Rev. Charles Plant
Chair, Self-Development of People Committee
Homestead Presbytery

Serving Hebron and Deshler Presbyterian Churches

METROPOLITAN
COMMUNITY COLLEGE

October 10, 1988

Mr. William Engles
Commissioner
Office of Human
Development Services
Administration for
Native Americans
Washington, D.C. 20201

Dear Mr. Engles:

The Northern Ponca Restoration Committee has advised me that they are applying for a grant through the Administration for Native Americans.

I became involved in working with this Committee during the Spring of 1988. We worked together on a committee that was formed to honor the late Ponca Chief Standing Bear. During this time, I became aware that the Ponca people are no longer recognized as a tribe, and that they were deeply concerned with efforts to have the tribal status restored.

The ANA Grant will help provide necessary funding to:

- Compile an accurate membership role
- Develop a tribal government
- Establish a land base
- Restore the Ponca Tribe as a federally recognized tribe

I strongly support their efforts to restablish and gain recognition for the tribe and urge you to consider favorably the request of the grant proposal of the Northern Ponca Restoration Committee, Inc.

Sincerely yours,

Burrel H. Beck

Burrel H. Beck, Ed. D.
Vice President
Marketing and Public Relations

jh

ELKHORN VALLEY CAMPUS FORT OMAHA CAMPUS SOUTH OMAHA CAMPUS
P.O. BOX 3777 OMAHA, NE 68103-0777 (402) 449-8400

NEBRASKA INDIAN CHILD AND FAMILY CONSORTIUM
P.O. Box 340 Pender, Nebraska 68047 Phone (402) 385-2571

September 29, 1989

Tim Wapata
Administration of Native
American Programs
Washington, D.C.

Dear Tim:

This organization supports the restoration efforts on behalf of the Ponca Tribe of Nebraska.

In order for us to achive our mission of strengthening families and empowering communities we utalize a strategy of buliding upon the strengths found within our families and our communities.

We feel that this proposal attempts to develop several of this community's strengths which are key to their social and economic well being.

Thank you for your consideration and favorable response to this application.

I am,

John Vandall
John Vandall
Community Development Specialist

Board Members

Norma Stealer, Chairperson
Child & Family Services
Winnebago Tribe of Nebraska
Winnebago, Nebraska 68071

Mitch Parker, Vice-Chair
Child Protective Services
Omaha Tribe of Nebraska
Macy, Nebraska 68039

Carol Herrera, Secretary
P.O. Box 343
Minatare, Nebraska 69356

Valerie Shangreaux
Lincoln Indian Center
1100 Military Road
Lincoln, Nebraska 68508

Martha Thomas
Santee Social Services
Santee Sioux Tribe of Nebraska
RR #2
Niobrara, Nebraska 68670

Clyde Tyndall
Native American Community
Development Corporation
2226 Leavenworth
Omaha, Nebraska 68102

Staff

John Vandall
Community Development Specialist
P.O. Box 340
415 Main Street
Pender, Nebraska 68047

UNITED CATHOLIC SOCIAL SERVICES
UCSS
ST. MARTIN DE PORRES CENTER
2417 Burdette Street, P.O. Box 2055
Omaha, Nebraska 68120
Phone (402) 341-4004

May 27, 1987

To Whom It May Concern:

This letter is in support of the Federal and State Recognition of the Northern Ponca Tribe of Nebraska.

At St. Martins, we are a community-based social service agency which provides a multitude of services, such as food pantries, utility assistance and other self-development services. In our work with the Native American community, we know that many of these group members are confronted with social and economic problems and federal and state recognition is essential in order to develop specific programs.

Therefore, we support such efforts and feel such changes would also aid the Ponca Tribe in acquiring educational, health care and other services from the government.

If you need any additional information, feel free to contact me.

Sincerely,

A'Jamal-Rashad Byndon

A'Jamal-Rashad Byndon
Program Director

ARB/sp

CHICANO AWARENESS CENTER

4825 So. 24th St.
Omaha, Nebr. 68107

Phones
733-2720 733-3661

February 13, 1987

To whom it may concern:

This letter is to express the Chicano Awareness Center's support for restoration of the Northern Ponca Tribe to state and federal status.

From our agency's work with other local minority groups, we have become aware of the poor socioeconomic conditions faced by Native Americans in Nebraska. We feel that status restoration for the Northern Ponca Tribe will be a beneficial step toward improving conditions for the members of that tribe.

Please contact me if I can provide any additional information. Thank you for your consideration.

Sinceramente,

Patrick McKee-Velasquez
Executive Director

PMV/nc

Native American Community Development Corporation of Omaha, Inc.

2226 Leavenworth Street Omaha, Nebraska 68102 402-341-8471

RESOLUTION

RE: Agency Support for the Federal and State Recognition and Reorganization of the Northern Ponca Tribe of Nebraska.

WHEREAS the Northern Ponca Tribe of Nebraska was terminated by the federal government on September 5, 1962, under P.L. 87-629; and

WHEREAS former members and their descendants of the Northern Ponca Tribe are not presently defined as "Indians" by the State of Nebraska or the Federal government; and

WHEREAS the descendants of the terminated Northern Ponca Tribe do not presently receive any health care, educational benefits, employment services, alcoholism services, and Indian child welfare services provided to other Indian [illegible] tribes; and

WHEREAS the Northern Ponca Restoration Committee, is a non-profit corporation in the State of Nebraska incorporated for the purpose of initiating and implementing efforts at restoring the Northern Ponca Tribe as a State and Federally recognized tribe; and

THEREFORE BE IT RESOLVED that the Native American Community Development Corporation of Omaha, Inc. (NACDC), hereby officially supports the full Restoration of the Northern Ponca Tribe to State and Federal status; and

BE IT FINALLY RESOLVED that the Native American Community Development Corporation of Omaha, Inc. (NACDC), assures the Northern Ponca Restoration Committee that it will provide whatever services are requested to assist in the restoration, subject to the laws of the State of Nebraska.

CERTIFICATION

We, the undersigned, hereby certify that the above Resolution was duly discussed and approved by the Board of Directors on February 11, 1987.

E. Alan Bresette

E. Alan Bresette, President

Robert O'Brien

Robert O'Brien, Secretary

INDIAN CENTER, INC.

MULTICULTURAL AWARENESS CENTER
1100 Military Road • Lincoln, NE 68508 • (402) 474-5231

June 11, 1987

Fred Leroy, Coordinator
Northern Ponca Restoration
2226 Leavenworth Street
Omaha, NE 68102

Dear Fred:

This is a letter of support for your effort to obtain state and federal recognition and restoration of the Northern Ponca Tribe.

Let us know how we can be of further assistance.

Sincerely,

Syd Beane

Syd Beane
Executive Director

Testimony of Russell C. Baker, Jr.
before the
Senate Select Committee on Indian Affairs

March 28, 1990

Gentlemen:

Thank you for this opportunity to add my support to all those who are engaged in the effort to acknowledge the Mowa Band of Choctaw Indians. My name is Russell Baker. I served as tribal administrator for the Mowa Band of Choctaws for four years. I have been working in community development with American Indians and Alaskan Natives since 1973. This has included five years with the Mississippi Band of Choctaw Indians, almost two years with the Inupiat people of Alaska's North Slope, as well as with other Indian groups in the southeast. I am presently on the staff of the Alabama Indian Affairs Commission in Montgomery.

Speaking as a non-Indian who has been able to observe a number of Indian tribes from within, i.e., to work on a daily basis with tribal governments and individual Indian people, and to share their dreams and ambitions, I have no hesitation, not only to describe the Mowa Choctaw people as Indian, but to assure you that they are an Indian tribe.

As any tribe is quite unique, by virtue of its geography, environment, and the other internal and external forces that condition it, so the Mowa Choctaw are unique. Inhabiting a location that resulted in early contact with French, Spanish, and English colonial powers, as well as being located on the southeastern perimeter of the Choctaw Nation in an area that was often jointly claimed by the Creek Nation, and being of of the lower or

Six Towns division of the Choctaw (whom many experts are convinced bore traces of an earlier Siouan influence), the Mowa developed lifeways that are distinct both from their Mississippi cousins and Oklahoma relatives. In addition, the Mowa adopted a few of the Cherokee who fled the incursion of Georgians on their lands in that state in the 1820s.

The influences of Christianity also seriously changed the tribe. As early as ca. 1800, Chief Robert Cole of the Choctaws founded a church in the Choctaw settlements in northern Mobile County. The influence of the churches resulted in the development of status leaders from among the clergy (both Indian and non-Indian). The influence of the church, however, did not eliminate the system of informal leadership which awarded status to those Choctaws who were most able to help the tribe meet its group needs; a custom which most resembled the traditional Choctaw structure.

After Indian removal, other influences began to hold sway among the Mowa Choctaw. As they had no claim to reserves, since they lived in an area that was annexed by treaty in 1802 and 1805 which provided them no land, they most frequently became squatters on the land of others. Since this land was largely unused until the advent of the timber and turpentine development beginning in the latter decades of the nineteenth century, there was no clamor for their removal. When these industries became dominant, the Indian population began to be exploited for their labor.

In addition, the racial attitudes of the period began to work to effectively classify them as "persons of color," thus further obscuring their real identity; this despite their own efforts to correct the record. This occurred notwithstanding their descendance from some of the most recognizable mixed-bloods of the Choctaw Nation; people such as Pierre Juzan, Alexander Brashears, and the children of Young Gaines, an early trader and the uncle of George S. Gaines, U. S. agent to the Choctaw, by Kali-oka, a Sixtown Choctaw.

The extent of the discrimination that was faced by these Alabama Choctaws has been compounded by unfounded notions of their ethnicity that ranged from their having been classified as Cajun Indians to their being miscast as Cherokees. Even census takers fell victim to these unfortunate categorization processes, as we have found Federal census records on which the self-reports of members of tribe that they were Indian had been changed by the census taker or his supervisor, typically to the category "other." or "mixed." There is even a note in the margin of at least two of the census schedules stating "these people are mixed French, Spanish, and Indian but their habits are mainly Indian."

Frankly, I applaud their persistence and courage. I know from direct experience that they have sacrificed much to retain their identity. In an age where homogenization of cultural groups is touted almost as patriotic, Alabama's Choctaws have retained their group cohesion and pride in their Indian identity.

In order to do this, they have endured, almost to this day, unremitting abuse from some of their unenlightened neighbors, curiosity and misuse by some self- aggrandizing academicians, grinding poverty attendant to their rural, isolated environment, and, to compound their plight, profound neglect and simple rejection from the very agency of the federal government that should have been their advocates and protectors.

In the four years during which I worked with the Mowa Choctaw, I found them a gentle, family-centered, caring people; people who, although it may appear to the casual observer have lost much of their culture, maintain a central corpus of beliefs and interactions among themselves that is identifiably Indian to any open-minded observer who lives in their midst for more than a day.

I have also listened to their elders tell of their history and life-ways. They tell of the liaison of the Choctaw maiden Kali-oka with Young Gaines, a Virginian who had migrated to the Choctaw Nation prior to 1800 and had served as interpreter for the United States in its early treaties with the Choctaw. This liaison produced four children, among whom was a girl named Rose.

Rose, when she came of age, married Young Gaines' cattle tender, Daniel Reed. The children of Rose and Daniel became the progenitors of thousands of the Choctaws who live in southwestern Alabama.

While the union of Rose and Daniel may have been the most recollected of the events that distinguished the tribe, other Choctaw avoided removal and remained in the area to contribute their heritage to the tribe. These included Tom Gibson a Choctaw had no reservation but who led the recalcitrants in their determination to remain; Doc Eaton, a grandson of Piamingo Hometak, a signer of the treaty of 1802, William Jones, a notable mixed blood, and Pierre Juzan, a signer of the Treaty of Dancing Rabbit

Creek who later became a chief of the southern district of the Choctaw Nation in Indian Territory.

Descendants of these Choctaws, as well as many less well-known Indians, live in a well-delineated territory in southern Washington and northern Mobile counties in southwest Alabama. Their communities are practically devoid of non-Indian residents. They have their own system of churches and, until the implementation of the civil rights legislation of the 1960s & 70s, their own schools.

It is my firm view, therefore, that the Mowa Choctaw possess all the characteristics normally associated with tribal Indians; furthermore they have always identified themselves as tribal Indians; this despite the attempts of outsiders to create new categories for them.

Since I managed the project to prepare the petition for acknowledgement which is now in the Branch of Acknowledgement and Research, I would also like to comment on my experience with the administrative process which is presently in place.

When I first arrived at tribal headquarters in McIntosh in 1983, a full year's work had already been done on the genealogical portion of the petition. An anthropologist, historian, and genealogist had been identified and had begun some preliminary work in collecting data for the project. It was more than six years later that the final touches were put on the documentation and it was sent to Washington. During this six-year period, over 400 hours of interviews were conducted, extensive research was done in state archives in Mississippi, Arkansas, Oklahoma, North Carolina, and Alabama, as well as the National Archives in Washington, D.C. and branches in Georgia and Texas, many hours of volunteer research were donated by friends in Washington and in Alabama in addition to those hours compensated by the project, and many drafts of the document were drawn, critiqued, polished and edited by the research team. During that period, we also spent many hours developing a computer data base on which to enter genealogical and tribal enrollment information.

During the period of development of the documented petition, we had a number of contacts with Branch of Acknowledgment and Research staff and its former director. On each occasion, we were confounded at the apparent escalation in the kinds and amounts of documentation that were required. Each contact seemed to yield additional requirements or a heightened level of documentation. Later contacts confirmed our suspicion that the process seems to have become a contest between the BAR staff and the professional historians and anthropologists who were doing the research, thereby steadily making the criteria more difficult to meet as the BAR staff and the academicians interacted with one another.

I submit that this process should not become an academic exercise in which the petitioning tribe is caught in the middle. The consequences of losing this exercise are too serious to be subject to this kind of whimsey.

It is also apparent that the standards of proof required by BAR are higher than would normally be required in the disciplines from which the petition is derived. In most cases, any documentation other than from federal records is almost always suspect. Disputed documentation is always settled against the interest of the petitioner. Normal historical methodology does not seem sufficient to build a case for the petitioner. Direct and unequivocal evidence is all that seems to be acceptable.

In summary, I am most pessimistic that any petitioner can, at the present time, get a favorable ruling from the FAO solely on the basis of the evidence, no matter how strongly that the case is made. My contention is that this office is being operated to severely limit the number of tribes which are to be recognized. I am not sure that the Mowa Choctaw, or any other tribe, can get a fair shake" from this agency as presently constituted.

In closing, I would like to thank you for this opportunity to get my thought about this matter on the record. Although I speak only to my experience, I feel an empathy with all of those Indian people whose tribal identity have been obliterated from the record, whatever the means by which that has occured; And I would plead with this committee to report this legislation to the floor for passage at the earliest possible date.

THANK YOU.

STATEMENT OF CONGRESSMAN SONNY CALLAHAN

Mr. Chairman, I appreciate this opportunity to express my support for the MOWA Choctaw Indians' federal recognition efforts. Thank you for scheduling this hearing on their case. The MOWA Choctaws of southeast Alabama reside in the district which I represent and I am pleased to have the opportunity to offer testimony in support of Senator Shelby's proposed legislation for their tribal recognition. I have introduced legislation in the House, H.R. 1562, the MOWA Band of Choctaw Indians Recognition Act, identical to Senator Shelby's bill which is before you today.

The road the MOWA's have traveled to stand before you today has not been a short or an easy one. Despite harsh and prolonged social, economic and educational discrimination and disadvantage, the MOWA Choctaws have fought to continue and to preserve their heritage, their tradition and their tribal identity. The dedication of their efforts in this regard is reflected by the facts that the MOWA Choctaws are and have long been recognized as an Indian tribe in the community where they reside, and are recognized as an Indian tribe by the state of Alabama. Indeed, it is ironic that the federal government was the first to recognize the MOWA's ancestors as an Indian tribe when it wanted to procure the land owned by this tribe and to move its members west, but is the last government to give this tribe modern-day recognition. This irony is compounded by the fact that it was the federal government which promised in 1830 that Choctaws who chose not to remove west, but instead elected to stay in their south Alabama native homeland, would forever retain their rights as Choctaw tribal members.

Federal government recognition for the MOWA Choctaws at this time is more critical than ever. Federal recognition, of course, will provide a confirmation of the MOWA Choctaws' heritage which the tribe can carry proudly in its future interaction with other Indian groups. Interestingly, members of the MOWA Choctaws have been chosen by two Alabama governors to represent all Alabama Indians, including those that are federally recognized, to the Interstate Indian Conference. Federal recognition will also provide a legacy which the MOWA Choctaws can leave to their children as well as an extremely meaningful memory for their elders. Most importantly, though, federal recognition provides tangible benefits which this tribe so desparately needs in its continuing struggle to preserve its Indian community and identity.

The MOWA's bring to you today the proof and evidence that they have developed to support their request for tribal recognition, which proof has been submitted to the Bureau of Indian Affairs as well as to this committee. We are all painfully aware, however, of the failings of the administrative process for federal recognition as an Indian tribe. Although I believe that the proof which the MOWA's have compiled and which is submitted here today provides compelling evidence of their Choctaw Indian ancestry and continuous tribal existence, the submission of this evidence is only the beginning of a long and expensive process if the MOWA Choctaws are forced to endure the administrative procedure for recognition. Outside experts and Congressional members alike have recognized that the administrative process for tribal recognition has become increasingly slow and costly, as well as unpredictable and arbitrary in the acknowledgment standards that are applied. The burden of this process may well be prohibitive for a group the size of the MOWA's which has such limited resources.

The MOWA Choctaws should not be required to endure the BIA administrative process for tribal recognition for reasons in addition to practicalities, however. As well as establishing their status as a continuing Indian tribe, the evidence developed by the MOWA's in support of Senator Shelby's recognition legislation provides the justification for Congressional, as opposed to administrative, recognition of the MOWA Choctaws. The proof submitted by the MOWA's today clearly demonstrates that their direct tribal ancestors were recognized in early treaties with the United States and were guaranteed the right by those treaties to maintain their Choctaw tribal identity and rights as members of an Indian tribe if they continued to live in the area of their ancestral origins. The modern-day Choctaw Indian tribe living in Mobile and Washington counties that has adopted the name MOWA's and is here before you today are clearly the descendants of the south Alabama Choctaw Indians who exercised their right to remain in their homeland as provided by those treaties. The United States has broken these treaties by neglecting its duties to create and maintain a relationship of trust and to ensure and effect the rights that were guaranteed the MOWA Choctaws and their ancestors by these treaties. Congress, and not the BIA, has the jurisdiction and obligation to correct this wrong and to declare the proper status of these people. I therefore urge this Committee to honor Congress' obligation to the MOWA Choctaws where those before you have failed.

The effort which has been mounted by the MOWA Choctaws to preserve their tribal identity and to document their history in light of the limitations of their resources is symbolic of the strength of their heritage and culture. Indeed, the MOWA resolve to preserve their identity is evidenced in more ways than just the effort reflected by the proof that they submit to you today. This tribe has pooled their community resources to buy back a part of their original tribal lands and today commit that land to agricultural uses for the benefit of the entire MOWA Choctaw community. The MOWA Choctaws also hold ceremonies and celebrations on their tribal lands to instill in their youth the pride of their ancestry. The modern tribe has established a museum in Mobile to educate their non-Indian neighbors about the Indian heritage that is a part of their community's rich history. The federal government must also take a role in preserving this important native American culture. These people and their culture could still be lost, in spite of their resolve, if not for the intervention of the federal government to provide the economic and educational opportunities in the MOWA community to young tribal members so that the new generation of MOWA Choctaws will not be forced to leave their ancestral homeland thus spelling the death of the MOWA Choctaw tribe. Congress has the obligation to ensure the continuation and preservation of this culture to both the MOWA's and the American people, as sure as it has a duty to preserve any other national treasure, resource or symbol.

It is an honor and a privilege for me to support the cause of these proud people. I join with Senator Shelby, and others who have submitted statements in support of the MOWA Choctaws, in urging that this committee fulfill its duty and honor the prior commitment of the United States to these Indians by affording them the recognition and rights that are justly theirs.

Testimony of Gloria Chytka
Secretary/Treasurer, Ponca Tribe of Nebraska
On S. 1747, the Ponca Restoration Act
Before the Senate Select Committee on Indian Affairs
March 28, 1990

Mr. Chairman, Members of the Committee:

My name is Gloria Chytka, a descendant of the Northern Ponca's. I live at RR 1 Box 31 in Lake Andes, South Dakota, on the Yankton Sioux Reservation. I am the Secretary of the Northern Ponca Restoration Committee, Inc, a position I have held for the last three years. My father's name is on the 1934 Ponca Base roll and on the1962 Ponca Tribal roll that the BIA compiled after termination. With me are my daughters, 19 year old Emilia, and 15 month old Rachael, two of my four children. My children and future grandchildren are the reasons I am here to testify today. We are honored to be here before you today to speak for the Ponca Restoration Act, S. 1747.

I am here today to share with you my personal feelings and views about our history, termination, and our ongoing struggles to be recognized as Northern Poncas once again.

It is with great pride that I can trace my personal ancestry back to 1780 when Nabawonton, or Treads on Two, was born to Smoke Maker. He was my grandfather seven generations ago. His daughter was High Feather who married a Frenchman; their daughter was Mele, who was grandmother to Rachel, who was my great grandmother. Rachel passed on some of her Ponca traditions and ways to her grandchildren, but many others were lost over the years. Her son, my grandfather, was born and raised on an island in the Missouri River. We have heard many happy stories from those times.

I married a Yankton Sioux. My children have been raised in the traditional cultural and spiritual ways of the Yankton Sioux. The Yankton Sioux Reservation that we live on is across the Missouri River from our former Ponca reservation, done away with by the Ponca Termination Act. I have passed on the Ponca traditions from my great-grandmother, but I have not been able to teach my children all the culture and spiritual ways of the Northern Ponca, as there are no elders close to teach me nor my children the things I do not know. I have tried to instill a pride in being Northern Ponca in my children. It is hard to do so when not many people know that there are Indians known as Northern Ponca. It would be a source of great honor and pride to our people to be recognized once again as Indians of the

Northern Ponca Tribe.

There are many other Northern Ponca people who live on the Yankton Sioux reservation also. They do not receive any of the benefits of the Yankton Sioux as they are not enrolled members of any tribe. They cannot receive much-needed medical care that they cannot afford, as they are not allowed to use the Indian Health Services available on the Yankton Sioux reservation. The Ponca tribe completed a major socioeconomic survey of our members in October, 1989. According to our survey, 40% of Ponca heads of households were unable to see a doctor when they needed to because of lack of funds. All of these had at least one of their household hospitalized within the last year, and 35% had an illness or injury that prevented that person from working or attending school. 27 % of the households had members with diabetes, 43% with high blood pressure, 33% with arthritis/rheumatism, 34% with hearing problems, 11% with heart disease, 57% with dental problems, 39% with allergies and /or asthma, and 16% with physical disabilities. And 24% of the households had no medical insurance of any kind.

Once, the Northern Ponca were a free and happy people on their own land. They were the only Plains tribe that never had a battle with the "white" settlers and soldiers. They were a peaceful tribe of farmers. Now, most of them live in the larger cities to have jobs and provide for their families.

Just before termination was carried out in the early 1960's, our jobless rate stood at 5%. This has all changed. The economic status of the Northern Ponca, according to our socioeconomic survey, is one of poverty and unemployment. Nearly 74% have a total family income of less than $25,000 per year. 31% of individuals fall below the poverty line. 57% of adults are not employed, while the national number is below 10%. In Nebraska, the unemployment rate for all citizens is below 3.5%.

Many Poncas living in Omaha, Lincoln, Niobrara, Verdigre, and Norfolk have kept up a community status by living in the same areas and communicating with each other daily. Some are involved in activities to help their friends and relatives.

According to our survey, 86% of the Northern Poncas believe that termination has caused a loss of heritage, customs, and spiritual beliefs. It is hard to pass on traditions when there is not a central homeland community to support traditions and culture. A reservation near Niobrara, Nebraska, in the area of our former reservation, would be a good place to have a community center to gather to learn the language, cultural, and spitirual ways. The elders could be available to teach all others, thus enhancing the lives of old and young alike.

It is unrealistic to think that all cultural and spiritual ways will resume in full force after twenty-seven years of being terminated. It will be a slow rewarding experience to bring back to all the Northern Ponca a choice to know their language, crafts, ceremonies, spiritual ways, and other cultural ways. But we celebrated our annual PowWow on July 4, 1988 and are preparing for our next one in 1990. We, as a People, can have more traditional gatherings to relearn our ways. All the tribal members can have a say in their tribal government as they did before termination. It is important to relearn all of our cultural and spiritual ways to be able to teach our children the respect and knowledge that once would have been theirs automatically.

By restoration, the Northern Poncas can achieve a better way of life through self-determination, self-awareness, tribal sovereignty, and retaining our cultural and spiritual ways. We can manage our own affairs and serve our people with the full responsibilities of a Tribe.

On behalf of our elders, children, and other tribal members, I respectfully request that you carefully consider and recommend passage of our Ponca Restoration Bill, S. 1747. Thank you for your efforts on this important issue.

Respectfully submitted by

Gloria M. Chytka

Gloria M. Chytka
Secretary/Treasurer
Northen Ponca Tribe of Nebraska

STATEMENT OF JACK EDWARDS
MEMBER OF CONGRESS FOR ALABAMA 1965-1985

I first became aware of the Choctaws of north Mobile and south Washington counties in Alabama, who have as a modern designation adopted the name MOWA's, in 1964, as I traveled the district which I served as a United States Congressman for twenty years beginning in 1965. At that time, I was approached by Gallasneed Weaver, one of the MOWA community leaders, inquiring about federal assistance for education and other programs to improve the plight of his people. I was, at first, surprised to learn that there were Indians living in my district and then concerned upon becoming aware about the conditions under which the MOWA's existed.

The MOWA Choctaws reside in a relatively isolated rural area in a series of contiguous communities made up almost exclusively of their people. As I learned in my interaction with the MOWA Choctaws and through my study of their community, these Indians for many years isolated themselves as a result of the discrimination that they suffered in their attempts at contact with the non-Indian world. For example, although several chemical companies were the predominant employers in south Washington and north Mobile counties when I became a Congressman, these chemical plants would not hire the MOWA Choctaws. One of my acts on behalf of the MOWA Choctaws was to intervene with these chemical plants and persuade them to hire these Indians.

In so doing, it was apparent to me that the MOWA Choctaws were recognized, and had been recognized, as Indians by members of the area where they resided, separate and distinct from other ethnic groups of that area. Unfortunately, that recognition had frequently led to discrimination, as was the case when the MOWA's originally sought employment in the chemical plants in their community.

I also learned in my study of the MOWA Choctaws that their recognition as a separate Indian community in the south Washington and north Mobile county area was not something of recent development. Timber producers of those counties had long been aware of the MOWA Choctaws, knew of their separate community, and knew the leaders of these Indians, as reflected by the fact that these timber producers would approach the MOWA tribal leaders and negotiate with them for labor to be provided by the entire MOWA community. I also, of course, became aware of the separate schools that the MOWA's had established for their tribal members, as well as the churches that they had established dating back to the early 19th century.

During my tenure in Congress, the MOWA Choctaws, although limited by their very scarce resources, worked to develop information necessary to seek governmental recognition as an Indian tribe and community. In 1979, the MOWA Choctaws were recognized as an Indian tribe by the state of Alabama. During this same time period, the MOWA Choctaws worked and employed the services of experts to develop what has now become the massive amount of information, proof and documentation required to submit their petition for recognition as an Indian tribe to the federal government. Unfortunately, as we all know, the substantial effort and expense that preparation of a federal recognition petition requires is only the beginning of that process. As Senator Inouye has reported, there were, as of February 3, 1989, over one hundred petitions for acknowledgment pending within the offices of the Bureau of Indian Affairs, with the BIA completing a review on average of only two petitions a year. Senator Inouye's analysis also estimated that the average cost of completing a petition for acknowledgment is approximately $250,000. The MOWA Choctaw community consists of only approximately 5000 individuals, most of whom have very limited financial resources as a result of years of discrimination and limited educational opportunities. The financial burden, alone, of the administrative process for tribal recognition may well be prohibitive for this legitimate Indian tribe.

The irony of the MOWA's being required to undergo the administrative process for tribal recognition is that they have already been Congressionally recognized and would continue to be federally recognized if not for the misfeasance and malfeasance of agents appointed by Congress to protect the rights and fulfill the obligations owed to these Indians by the United States. Indeed, the previous federal recognition of the Choctaw Indians of south Alabama is the basis for the MOWA's contention that the administrative process for recognition is inappropriate in their case. The MOWA Choctaw's submit, and I believe that a careful review of the evidence that they have painstakingly developed to date supports them, that the Treaty of Dancing Rabbit Creek entered in 1830 between the United States and the Choctaws who at that time resided in Mississippi and southern Alabama (the very same area occupied by the MOWA's today), mandates their recognition and rights as an Indian tribe. That treaty, consistent with most other agreements between the United States and Indians made at that time, was entered for the primary purpose of removing the Choctaws of Mississippi and southern Alabama to the west so that the United States could take their land. The Treaty of Dancing Rabbit Creek reserved, however, in its Article XIV, the right of any Choctaw who did not desire to remove west to stay in their native homeland and provided that by so doing, these Indians would "not lose the privilege of a Choctaw citizen." The present day MOWA Choctaws are descendants of those Choctaws who exercised their rights under Article XIV of the Treaty of Dancing Rabbit Creek, and have continued the Choctaw community, albeit on a smaller scale, that existed in southern Alabama at the time of first European contact with that area.

The present day MOWA tribe members can and have traced their ancestry back to the signors of the treaty of Dancing Rabbit Creek. Their continuous community is established by documentary evidence of federal and state government contact by and with tribal ancestors before and after the Treaty of Dancing Rabbit Creek including land records, other treaties, petitions for the honoring of treaties, censuses, court records, military muster rolls and school records. In addition, there are various accounts of the presence of this south Alabama Choctaw community in articles, diaries, books and essays written during the 1800's and continuing to the present day. Many of these records and documents, however, contain mischaracterizations and misclassifications of the south Alabama Choctaws. For example, for a period of time the Choctaws were called and written about as "cajuns," a designation given them by a state senator who did not know or investigate their origins. Indeed, it is clear today that there are not and have never been "cajuns" living in the area occupied by the MOWA's. MOWA Choctaws have also been designated as black, mulatto and white on various official records, although their family names and ancestry, when studied, clearly reveal them to be Indians. MOWA Choctaws have also attempted, unsuccessfully, to sign on the rolls of other Indian tribes, including Cherokees and Creeks, as part of their desparate efforts to gain any sort of aid and assistance.

The geneology of the present tribe has been carefully prepared. The MOWA tribal ancestry has been carefully studied. It is clear from these efforts that the present day tribe traces back to the Choctaws of south Alabama who were signors of the Treaty of Dancing Rabbit Creek, who, prior to that treaty, owned the land of south Alabama where the modern-day Mowa's presently reside, and who have stayed in their ancestral homeland through the present time pursuant to the rights provided by that treaty. Indeed, to the extent that there is any confusion about the geneology and historical continuity of the MOWA Choctaws, that confusion is the fault of agents of Congress, a fact which once again supports the MOWA Choctaw's contention that it is the duty of Congress, and not of the BIA, to determine and declare their rights. After the Treaty of Dancing Rabbit Creek in 1830, Congress sent its agent, Colonel William Ward, into MOWA territory to compile a roll of those Choctaws who claimed the right to continue their south Alabama and Mississippi residence under Article XIV of the Treaty of Dancing Rabbit Creek. If Colonel Ward would have performed his duties as instructed by the Congress, there would be an undeniable record of the ancestry of the present-day MOWA Choctaws. Instead of creating, however, what would have been conclusive proof of MOWA tribal existence, Agent Ward, who has been historically described as intemperate, incompetent and abusive to the Choctaws, left a legacy which may well be used by the BIA against the MOWA Choctaws in their efforts to obtain tribal recognition. In short, Agent Ward did not compile the record ordered by Congress of Choctaws claiming under Article XIV of the Treaty of Dancing Rabbit Creek. As a result, Agent Ward's failings have been used by some to argue that the very few names which Agent Ward did compile included all of the Choctaw claimants that existed at that time, and that the modern day MOWA Choctaws whose ancestors do not appear on Agent Ward's roll are Indian imposters.

Census takers also contributed to whatever confusion presently exists regarding the MOWA Choctaws' history and continuity of community. Throughout the 1800's and 1900's, census records show clear proof of alterations by federal government employees to change the ethnic designation of the south Alabama Choctaws who registered as "Indians," to some other ethnic designation such as "black," "white," "cajun" or "mulatto," based on the whim, prejudice or ignorance of those officials. Moreover, as alluded to above, the MOWA's themselves sometimes contributed to this confusion by adopting other ethnic designations in their attempts to escape the poverty and prejudice which was attendant to an Indian classification. Indeed, it is sad to say that many of the designations of the MOWA Choctaws were the result of any number of factors other than historical analysis. All of these problems, though, including the poverty of the MOWA Choctaws and the prejudice against them, were directly related to their abandonment by the federal government.

Fortunately, other evidence exists, which evidence is submitted to you today, to establish the legitimate south Alabama Choctaw ancestry of all of the present-day MOWA tribal members. The effort to compile this information, however, would have never been necessary if Congress' Agent Ward and other agents of Congress would have fulfilled their duty to this Indian tribe.

Based on the past failings of its agents which has directly resulted in the present plight of the MOWA's, I respectfully submit that Congress, not the BIA, has the responsibility to acknowledge this Indian tribe. Indeed, the BIA may well consider itself or take the position that it is powerless to abrogate the findings of Colonel Ward, or other agents of Congress, regardless of the historical proof of their incompetence or error. Moreover, it is the exclusive province of Congress to enforce treaties and it is the enforcement of the Treaty of Dancing Rabbit Creek that is the issue in the case of the MOWA Choctaws. The BIA may well not have jurisdiction to address and resolve the question of MOWA Choctaw tribal status. Accordingly, Congress should and must declare the MOWA's rights.

In sum, the MOWA Choctaws are and have been recognized in their community throughout recorded history as an Indian tribe. They have also been so recognized by the state of Alabama. The MOWA Choctaws are recognized by other Indian tribes and national Indian organizations as a legitimate Indian tribe. They were historically recognized by the federal government until the federal government failed in its obligation and commitment to preserve the trust that was ensured them by the Treaty of Dancing Rabbit Creek. Congress can and should now reverse that historical wrong. I thank the MOWA's and this Committee for the opportunity to be a part of the effort to accomplish the restitution of the MOWA's rightful status.

PREPARED STATEMENT OF ELIZABETH GROBSMITH

I am Dr. Elizabeth S. Grobsmith, Associate Professor of Anthropology from the University of Nebraska in Lincoln, Nebraska. During the fall of 1989, members of the Northern Ponca Restoration Committee approached me and requested my services as consultant to the Committee in documenting the aboriginal culture, location, history and evaluation of contemporary conditions for the Northern Ponca Tribe. My Research Assistant, Ms. Beth R. Knoche, and I gathered archaeological, linguistic, historic and ethnohistoric data on the Northern Ponca which are presented in our study, "The Ponca Tribe of Nebraska: History, Socio-Economic Status and Current Efforts to Obtain Restoration of Tribal Status". Additionally, we analyzed over 120 surveys which the Northern Ponca conducted, examining the health, education and economic concerns of contemporary Ponca tribal members. The results of that survey are also included in our report.

The Northern Ponca were a Siouan-speaking Woodlands/Plains tribe with a complex social and religious tradition and whose subsistence was based largely on farming and hunting. Closely related to the present-day Omaha tribe, the tribes' archeological history places their aboriginal location in a territory stretching from the Missouri River near present-day Sioux City, Iowa southward to the Platte River in Nebraska and west to the Black Hills of South Dakota, while their northern border was northern South Dakota and Minnesota. Archeological excavations document their presence throughout the Plains area from as early as 1200 A.D. to 1700 when early fur traders made contact with them and recorded peaceful and friendly relations. The Ponca population, as with many Plains tribes, was badly reduced by smallpox epidemics. Despite this reduction, they continued to maintain their elaborate clan structure and religious practices.

In the series of treaties made with the Northern Ponca, their land base was systematically reduced, finally resulting in their land being inadvertently included in the 1868 Fort Laramie treaty and becoming part of the territory of the Sioux Nation. The subsequent removal of the Ponca to Oklahoma was devastating to the population, which nevertheless returned to their homeland on the Niobrara under the leadership of the great Chief Standing Bear. Since their termination in 1962, the Ponca have continued to retain their cultural integrity by meeting, politically organizing, and striving to obtain state and federal recognition. A survey of over 100 tribal members shows the Northern Ponca to have suffered a loss of health, economic and educational benefits to which other American Indian tribes are entitled. In 1986, the Northern Ponca Restoration Committee formally organized and incorporated and in 1988 the Northern Ponca Tribe was officially recognized as a tribe by the State of Nebraska. The many contemporary Northern Ponca tribal members are deserving of the federal recognition which would once again entitle them to the federal services which affect their health status, educational opportunities and economic welfare.

THE PONCA TRIBE OF NEBRASKA

HISTORY, SOCIO-ECONOMIC STATUS AND CURRENT EFFORTS TO OBTAIN RESTORATION OF TRIBAL STATUS

Acknowledgement

The author wishes to express appreciation to Beth R. Knoche, Graduate Research Assistant in the Department of Anthropology at the University of Nebraska, for her help in gathering the data for this report.

"It's a shame we have to be beyond hope or desperate to the point of death before our cry for help is heard. My cry is for you to hear the plea of those who can still do for themselves if assisted by learning, for those who are not yet born. There is so much one can do with the knowledge someone cares".

"We are descendents of Poncas--it flows through our blood peacefully like the Niobrara. We are entitled to be recognized like your descendents are recognized. We are one and the same."

comments by Ponca tribal members

Introduction

The purpose of this report is to provide an historic and anthropological account of the Ponca tribe from the period prior to contact through the present. Establishment of such records provides the basis for the Ponca tribe's request to Congress for restoration of their tribal status. Part I of this report documents the aboriginal Ponca--their location, linguistic affiliation, subsistence, social and political structure, their religion and culture. Part II describes historic contact with the Ponca and documents their treaties with the U.S. government, forced relocation to Indian Territory, the return of Standing Bear to the north, and Ponca status through the termination of their reservation. Part III presents socio-economic data, results of a survey conducted in 1989 by the Northern Ponca Restoration Committee. Part IV addressed the six criteria required by Congress to achieve restoration of tribal status, employing survey data to address each criterion.

Part I. Origins: History and Culture

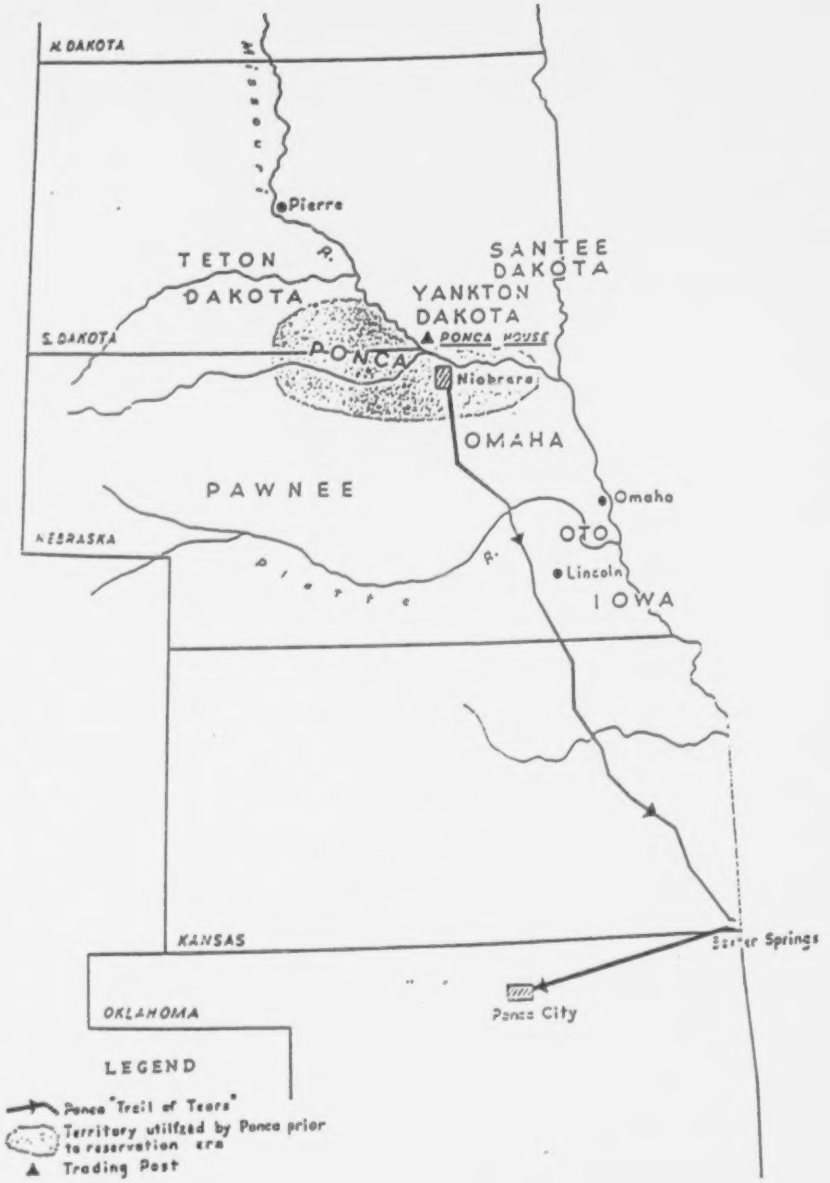
Although during the historic era the Ponca were known as a Plains/Prairie tribe, archeologists have ascertained that Ponca culture derived from the highly developed Middle Mississippian cultures of the Eastern Woodlands in North America. The elaborate art and technology, social and political organization, and complex ceremonial life are all attributed to their having been part of a cultural tradition representing "the most intensive Indian occupancy of Eastern North America and the highest cultural achievement north of Mexico" (Howard 1965:3). The Middle Mississippian influences from the Southeast had radiated north and west into the Northeastern Woodlands and the Plains, creating for tribes like the Ponca a primarily agricultural way of life, complex social and religious customs, and a tradition of building fortified towns.

Two major linguistic groups were influenced by these elaborate cultural manifestations: the Caddoan speaking tribes, such as the Arikara and Pawnee, and the Siouan tribes, of which the Ponca was one. One division of the Siouan linguistic group included two branches: the Chiwere groups, including the Winnebago, Iowa, Oto and Missouri, and the Dhegiha groups, which included the Ponca, Omaha, Osage, Kansa and Quapaw. The Ponca refer to themselves as Ponka and were so known both by other Dhegiha speakers and Chiwere speakers as well. The meaning of their name is no longer known, however it is known that the name Ponca is not of foreign origin, for it appears as the name of subgroups or clans of other Dhegiha-speaking tribes (Fletcher and LaFlesche 1911). One scholar suggests that the name Ponca means `sacred head', but this has not been confirmed by other researchers (Cash and Wolff 1975). The Omaha and Ponca languages are mutually intelligible and, with the exception of modern words, are considered the same language (Dorsey 1885:919-920).

Archeological evidence suggests that Dhegiha-speaking tribes such as the Ponca appeared on the Plains by approximately 1200-1300 A.D., and were perhaps part of the Mill Creek Aspect in South Dakota (Griffin 1946:89). Howard (1965) identifies thirty-one separate Ponca villages or camps, five of which have been excavated. Excavation of the Ponca Fort site, once a fortified earth-lodge village near the mouth of Ponca Creek in Knox County, Nebraska, suggests early habitation of the Ponca. Located eight miles northwest of the town of Niobrara, Nebraska and one mile east of Verdel, Nebraska, the village had been built near the confluence of Ponca Creek with the Missouri River and had been situated, for defense purposes, on a high bluff above the river (Howard 1965:11). Since this defensive fort so closely resembles the fortified constructions of the Middle Mississippians, it seems clear that the ancient Ponca brought with them to the Plains knowledge of a Woodlands style adaptation. Wood suggests that this site continued to be occupied through the trade period (1790-1800), as evidenced by large quantities of European trade goods (Wood 1960). Small amounts of pottery found at this site appear to have been made by the Arikara, who were likely taken as wives by Ponca men; (they may possibly represent Ponca trade with Arikara). Such early intermarriages are documented in Ponca oral history which tells of friendly contacts and joint bison hunts with the Arikara or "Sand Pawnee", from whom they probably learned how to build plains-style earth lodges (Howard 1956:13). This occupation has further been corroborated by early explorers who mentioned it in their journals.

The aboriginal location of the Ponca tribe has been reconstructed not only from archaeological investigation, but from oral history describing their settlement, historic migrations, and separation from their close linguistic relatives, the Omaha. Although there are many legends about their tribal identity, most agree that "the Ponca, Omaha, Kansa, Osage and Quapaw were once a single tribe in the Southeast, and that during the migration north and west the group split up, the Ponca and Omaha being the last to separate" (Howard 1965:14, Dorsey 1884:211-213). When they arrived at the Mississippi River, the Omaha (meaning "upstream"), Ponca, Osage and Kansa went upriver, while the Quapaw (meaning "downstream") went downriver. After this separation from the Quapaw, the Omaha and Ponca followed the Des Moines River to its headwaters to the northeast, through Missouri, Iowa and Minnesota, finally settling in a large village on the Big Sioux River, possibly around 1700 (Howard 1965). Experiencing attack by neighboring Dakota groups, they abandoned their village and turned south, becoming acquainted with the ancestors of the Arikara with whom they initially were at war but ultimately befriended. Remaining for a time near the head of Chouteau Creek (now known as Lake Andes in South Dakota), the Omaha and Ponca cut the sacred pole and assumed the clan organization which they had for several hundred years, until the time of their removal. The Ponca ultimately came to settle near the present town of Niobrara, Nebraska. Shortly after this, the Ponca and Omaha tribes separated and became distinct tribal entities. Different accounts place the Omaha-Ponca split anywhere from 1390 (Dorsey 1884:218-222) to 1650 (McGee 1897:191) to 1715 (Champe, in Wood 1959:10). The area which came to be traditionally inhabited by the Ponca stretched from the west bank of the Missouri River near present Sioux City, Iowa to the southern boundary, the mouth of the Platte River in Nebraska (Cash and Wolff 1975). To the west, the Ponca hunted in and west of the Black Hills in present day South Dakota; the northern boundary was the mouth of the White River in South Dakota (see map for illustration of historic Ponca location).

During the early historic period, fur traders came into contact and noted the Ponca in their early records. Cash and Wolff (1975) indicate that the Ponca were definitely on the Niobrara River in 1673. A French cartographer indicated their location on what is probably the Big Sioux River on a 1718 map, although they were not yet separated from the Omaha and are so identified. In 1786, another French trader indicated a Ponca village on the Missouri River between Ponca Creek and the Niobrara River, and another map published in 1826 but referring to 1796


N. DAKOTA
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SANTEE
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PONCA HOUSE
S. DAKOTA
PONCA
Niobrara
OMAHA
PAWNEE
Omaha
OTO
NEBRASKA
Platte
R.
Lincoln
IOWA
KANSAS
Baxter Springs
Ponca City
OKLAHOMA
LEGEND
Ponca "Trail of Tears"
Territory utilized by Ponca prior to reservation era
▲ Trading Post

Aboriginal homeland of the Ponca (Howard 1965) shows their village just north of Ponca Creek on the Missouri River. Another 1802 map shows this to be the historic Ponca location. The first trader to visit the Ponca and leave a record of it was Jean Baptiste Monier who traded with the Ponca in 1789 and even requested an exclusive trade relationship with them. During the latter part of the 18th century the Ponca were engaged heavily in trade of European items, this trade attracting other tribes to what became known as "Ponca House", a trade center located several miles up the Missouri from the mouth of Ponca Creek, established by another French trader, Jean Baptiste Trudeau. The Ponca gained considerable advantage in this trade and soon became the middlemen. Heavy trade brought disease and, by the turn of the century, smallpox had created such devastation that Ponca population was drastically reduced from near one thousand to approximately 200.

Ponca subsistence and adaptation was based on a combination of hunting, fishing, gathering of wild foods, and horticulture. The seasonal cycle was based on spring planting and a relatively sedentary village life, except for the summer and fall hunt. A fall harvest was followed by the late fall or early winter communal bison hunt, after which the Ponca stayed in their village to await spring planting. As with most other Plains groups, hunting was the preferred and most prestigious activity. Bison was the animal most commonly sought, although elk, deer, and antelope were also of principal importance, supplemented by small game. The Ponca had two styles of hunting: small group hunting, and the large tribal hunts which took place twice a year--in early summer, and during the late fall. Hunting activities were accompanied by considerable ceremonial activity, particularly emphasizing the centrality of bison since it supplied so many of the Ponca's technological needs. Abundant wild vegetal food such as wild rice, wild onions, Indian potatoes, wild sweet peas, tipsina (prairie turnips) were collected, supplemented by fruits, berries, nuts, and sap from the maple, hickory and box elder trees. Cultivation was done by women, and included maize, beans, squash, pumpkins, gourds and tobacco. Although trapping did not play a significant role in the indigenous Ponca economy, it became important during the fur trade period.

At the appointed time (either early summer or late fall), the entire tribe moved to a special location for the tribal buffalo hunt. Here the society camped in a particular order--the huduga or camp circle was arranged according to clan membership. The group bison hunt was extremely important and was rigidly controlled. A particularly skilled warrior was appointed as hunt leader, who exercised complete authority only during this period. Because of the critical success of the hunt, all the leaders' decisions and rulings had to be observed or severe punishments were imposed. Assisting him in his tasks were the Buffalo-police, chosen from the bravest of warriors (Howard 1965). Their task was to prevent hunters from going out to hunt ahead of the group, for fear of frightening away the herd and thereby endangering group welfare. Additionally, they settled disputes, punished offenders, preserved order in camp and regulated war parties (Provinse 1937). The most popular technique for group hunting was the surround, but buffalo were also driven off bluffs or onto ice. Cows and young buffaloes were most sought after, although some bulls were desired for their tough hides used to produce shields and moccasin soles (Howard 1965).

Social and Political Organization

The Ponca tribal circle represented seven patrilineal, exogamous (required to marry out) clans. Although Dorsey (1891) suggests that Ponca society, as with other Siouan tribes like the Omaha, was divided into two moieties or halves, most scholars agree that the society was not grouped into two halves (Howard 1965, Fletcher and LaFlesche 1911, Skinner 1915). Each clan had a particular location in the camp circle and assumed certain responsibilities in tribal political activities. Clans possessed "ceremonies and traditional prerogatives" (Howard 1965:97), such as personal names which referred to clan animals or clan taboos. Clan markings were also placed on arrows, so rightful claims of kills could be made during a hunt. Beginning with the first clan and proceeding clockwise around the camp circle, the Ponca clans were:

1. *Wažáže* (Snake or Osage) This clan had the responsibility of guarding the entrance to the circle; they were expert trackers. Touching snakes was taboo or forbidden.

2. *Níkapàšna* (Skull or bald head) This clan dealt with all matters about the human head: haircutting and dressing and curing headaches. Touching buckskin was forbidden to members of this clan.

3. *Đíxida* (Blood) This clan performed ceremonies to ensure a successful outcome of a hunt. They also officiated at chief installation ceremonies. Members of this clan were forbidden to touch human blood or mice.

4. Waśabe (meaning not known) This clan was the only one from which the head first ranking chief was chosen. Touching the head of any animal was tabooo, since the members were of the "head" or chiefly clan.

5. Maḱa (Medicine). This clan contained those who knew how to perform cures (herbalists).

6. Ńuxe (Ice). Members of this clan were experts on all matters involving ice (and water).

7. Hísada (stretching of a bird's leg when running). The main responsibility of this clan was to perform ceremonies to bring rain.

Although historically only seven clans existed, Howard (1965) notes the addition of an eighth clan, Wágežìga or 'white men's sons' which may have come into existence following contact and intermarriage during the fur trade period.

Ponca society was governed by two hierarchies of chiefs: those of the "first rank" and those of the "second rank" or little chiefs. These individuals normally came from particular high ranking clans and were generally male descendents of former chiefs. The head chief was always of the Waśabe clan and his authority was derived both from his social position and his sacred status as keeper of the tribal sacred pipe. A council of seven (first rank chiefs) politically controlled Ponca society, with aid from the seven second rank chiefs as needed. Ceremonial endorsement was required for all positions as chief, and exemplary behavior was expected. While tribal decisions were made by the council of chiefs, decision-making was by consensus and nearly unanimous agreement had to be reached before policy could be finalized. In addition to the tribal chiefs, every clan had its own hereditary chief who exercised authority only over his group.

Status in Ponca society was nearly always determined by kinship and descent. "One's position in Ponca society depended upon his position in the family, his family's position in the clan, and his clan's position in the tribe" (Howard 1965:81). In this way, the Ponca resemble the more sedentary horticultural tribes than they do the egalitarian, hunting tribes of the Plains. Marriage had to be with someone outside of one's own clan; normally, upon marriage, the couple either established their own residence or went to live with the groom's parents (patrilocal residence). An extended family consisting of several brothers and their wives and children was quite typical. Ponca marriages were close, as were relationships between parents and children of the same sex. Higher status was awarded older children within the family. While children enjoyed close relationships, at puberty they entered different spheres of activity and relations became quite restrained. As with most Native tribes, relationships between grandparents and grandchildren were extremely close, as elders provided much of the child care and instruction to children while parents were busy with subsistence tasks.

Religion and Ceremonial Life

Ponca religious life was based on a belief in a supreme being or creator known as *Wakónda*, 'mysterious one', today equated with the Judeo-Christian God. Spiritual beliefs, as with most Native American groups, were based on animistic concepts, wherein animals, persons, natural forces and objects were attributed with a life or spirit-like force. To the Ponca, this force was called *xúbe* or 'supernatural power'. Such power was sought during a vision quest, a ceremony of most plains tribes, in which a young person seeks supernatural aid by retiring to an isolated hilltop where he or she fasts and prays for four days and nights. Such prayer generally resulted in the spirit of an animal or bird appearing to him in a vision, bestowing special knowledge, songs and prayers which then belonged exclusively to that individual. Special powers could also be purchased in medicine bundles, thereby transferring its power to the new owner. Medicine bundles were individually held or might be owned by a clan or society; some were the property of the entire tribe. They were kept safely in the tipi or earth lodge and hung outside during favorable weather.

The Ponca practiced three major ceremonial events: the Sun Dance, Pipe Dance (*wá-wa*^{n}), and War Dance (*Heđuska*). The Sun Dance was considered the most sacred ceremony of the Ponca. Dorsey's 1905 description of this ceremony, the richest description in the literature, tells of this ceremony held "when the corn is in silk...last(ing) four days and four nights without drink, sleep and without food", during which the dancers were attached to the pole with rawhile ropes attached to skewers pierced in their flesh (Dorsey 1905, in Howard 1965:103). The center tree is symbolic both of an enemy and of firewood, and contains sticks representing the nest of the Thunderbird, eagle or loon. As with other Siouan tribes, the Thunderbird is the bringer of lightning, thunder and rain; and so the original symbolic meaning of the Sun Dance may have been as a prayer for rain both for crops and grass for the buffalo. Blowing on eagle bone whistles, dancers' "calls" imitate the sound of nestlings of the Thunderbird, invoking rain. The Ponca may have adopted the Sun Dance from tribes such as the Dakota or Sioux, and differ from their Omaha relatives who never practiced this ritual. It differs from others' performance of this ritual, however, in that it was held annually rather than being dependent on the vow or pledge of an individual (Dorsey 1905, in Howard 1965).

The Pipe Dance was second in importance only to the Sun Dance, and may be related ethnographically to the Calumet ceremony. A feathered wand, resembling a pipe, is carried, which, along with a gourd, imitates the flight of the eagle. The Pipe Dance was a ceremony of adoption, cementing ties of friendship and peace. A designated individual, the "honored one" (*hoⁿga*)--usually a child--was ritually captured and adopted, forming kin-like bonds with non-relatives. The child's acceptance of tobacco required his parents or kin group to provide gifts in honor of his or her adoption. Although such an honor placed considerable burden on the family of the honored child, rarely was this refused. As with other Plains tribes, the ceremony also functioned to redistribute wealth both within and between tribes (Whitman 1937).

The third major Ponca ceremonial was the War Dance of *Heđuska*. Most likely borrowed from the Pawnee, the dance became the province of a warrior's dancing society, consisting of drumkeeper, dance leaders and whip men who pushed reluctant dancers to perform. As historic warfare declined, this society became more religious and gift giving became an important activity, although many *Heđuska* songs refer to Ponca war heroes.

Numerous other Ponca societies, dances and ceremonial activities existed both for men and women, some rooted in the functions of indigenous medicine societies, others as dancing styles (see Howard 1965 for a detailed discussion of these activities). Both the Mescal Bean Cult and the Peyote religion (Native American Church) existed among the Ponca. Peyotism first came to the Southern Ponca from the Cheyenne in 1902 (Howard 1965) and was brought to the Northern Ponca by the Winnebago shortly thereafter. As with other plains tribes, the Ponca used the peyote button (*lophophora williamsii lemaire*) as a sacrament in an all-night ceremonial of prayer, singing and drumming Through communication with Father Peyote, prayer for a life or accomodation, sobriety and welfare was sought.

Part II: The Historic Period--Government Relations

The Ponca were considered a peaceful tribe who were never known to have engaged in war with the U.S. government and its troops. The smallpox epidemic during the winter of 1800-1801 took a terrible toll on the Ponca, reducing their ranks from 800 in 1790 (a decade prior to the epidemic) to 200 in 1804. In the seventy years which followed, four treaties were negotiated with the Ponca: the first two were treaties of friendship, and the second two involved land transactions. The first of these occurred in **1817**, during which:

> the United States Government began a program to secure the loyalty and friendship of the tribes of the Upper Missouri. On June 25, 1817, William Clark and August Choteau, acting as United States Commissioner, signed a treaty of perpetual peace and friendship with the Poncas (LeRoy and Tyndall 1987:1).

The treaty provided for mutual forgiveness of injuries or acts of hostility; for a perpetual peace and friendship between the Ponca and U.S. government; and for the promise of protection for the tribe to be afforded by the U.S. government.

In 1825, Brigadier General Henry Atkinson and U.S. Agent for Indian Affairs Benjamin O'Fallon were appointed to make treaties with the tribes of the Upper Missouri. The treaty they negotiated--the second treaty with the Ponca--dealt also with defining relations and made no stipulations as to land allocation. Signed on June 9, **1825**, the treaty acknowledged the supremacy of the United States, and authorized the government to regulate all trade and commerce with the Ponca.

The March 12, 1858 treaty--although the third treaty between the U.S. government and the Ponca--was the first to specifically negotiate a land agreement. Commissioner Charles E. Mix, on behalf of the U.S. government set the terms of the treaty: the cession of all their lands to the U.S., except for a tract of land given as a reservation and to which they promised to move within a year; annuities for thirty years, government support for Ponca subsistence, buildings and schools, houses, and purchase of stock and agricultural implements. All these provisions could be withheld from those using intoxicating liquor. The government was to be allowed to maintain military posts and roads, and agreement was reached to do what was necessary to insure friendly relations. As a result of this treaty, the Ponca accepted a reservation near their traditional homeland near the confluence of the Niobrara and Missouri Rivers in what is now southeastern South Dakota (Tibbles 1972).

On March 10, 1865 a "supplementary treaty" negotiated by Commissioner William P. Dole on behalf of the United States was signed with the Ponca, in which the Ponca ceded and relinquished to the United States a portion of the land they were given by the provisions of the 1858--an additional 30,000 acres (Howard 1965). In exchange for this cession, they were given certain fractional townships around the old Ponca village sites on the Niobrara River, returning to them their old burying grounds and cornfields (Howard 1965, Fletcher and LaFlesche 1911). The final reservation boundaries included 96,000 acres (U.S. Congress 1868, Vol. 14, p. 675-677).

Having finally settled on the reservation boundaries, the Ponca had a rude awakening when, three years later, "a United States commission sent to negotiate with the Dakota, through an inexplicable and almost criminal blunder, ceded to the Teton Dakota a tract of land which included all of the Ponca land, ceded and unceded" (Howard 1965:32). The Fort Laramie Treaty negotiated between the U.S. government and the Sioux ceded to the Sioux territory which included all that had been set aside for the Ponca!

The 1868 Fort Laramie Treaty transferred the land to the Sioux without consultation with the Ponca tribe. Having been raided for some time by the more numerous and powerful Dakota, the Ponca were victimized by their neighbors on whose land they now were "intruders". Howard notes: "Their (the Dakota Sioux) raiding was intensified until the Ponca could scarcely venture outside their villages to till their land" (Howard 1965:133). This impossible situation continued for eight years without correction, "the Government seeming to consent to the sacrifice of the rights and peace of a tribe that had never made war upon it and had never broken the faith" (Howard 1965:33). In fact, the U.S. government was supplying the Dakota with heavy-caliber rifles, supposedly for hunting buffalo. By 1876 the situation had become untenable. When Congress passed the general appropriation bill in August of that year, authorization was given for the

Secretary of the Interior to use $25,000 to remove the Ponca to Indian Territory (Tibbles 1972). In 1877, the Ponca chiefs were informed that they must move their people to Indian Territory in Oklahoma. Eight chiefs were selected to visit Indian Territory and select a new reservation there. These eight chiefs did go, but upon seeing the Indian Territory, refused to select a site and begged to be allowed to return north. Their request denied, they departed for the north anyway, making the 500 mile trip in approximately 40 days.

The Ponca and their representatives made every conceivable appeal to reverse the decision to remove them to Indian Territory; however, all their appeals were denied. Because of their unwillingness to go voluntarily, an order was issued for their removal on April 12, 1877. On April 30, 1877, E.C. Kemble, United States Indian Inspector, arranged to conduct the first group of 170 Ponca to Indian Territory; the second group departed on May 16. The Ponca removal to Okahoma was a "ghastly and miserable experience" (Howard 1965:33) and is known as the Ponca Trail of Tears. Bad weather and heavy rains resulted in impossible travel conditions, resulting in many deaths, including the death of the daughter of Chief Standing Bear. Continued storms, tornadoes and difficult weather took terrible tolls on the Ponca group, and little accomodation had been made for the difficult journey. The Ponca, "discouraged, homesick and hopeless, ...found themselves on the lands of strangers, in the middle of a hot summer, with no crops nor prospects for any"

(Howard 1965:35). Only 681 Ponca had arrived in Indian Territory. Because of widespread dissatisfaction with the area chosen for their new home, several leaders examined other locations and finally settled on an area of what is now north central Oklahoma on the west bank of the Arkansas River where a reservation was obtained using Cherokee land. The Indian appropriation bill passed by Congress on May 27, 1878 authorized the Secretary of the Interior to spend $30,000 to remove and relocate the Ponca on their new reservation near the Kaw River (Tibbles 1972). The Ponca departed for this land on July 21, 1878 and arrived at their new home eight days later. The new agency was located two miles above the confluence of the Arkansas and Salt Fork River. Suffering from severe illness caused by exposure and poor nutrition, the Ponca were extremely dissatisfied, having lost now one-third of their tribal members.

A series of historic events forever turned the course of history: the death of Chief Standing Bear's son and his request to be buried in his aboriginal territory on the Niobrara, resulted in a group of 66 Ponca led by Chief Standing Bear setting out in the winter of 1879 for their aboriginal homeland in Nebraska (Howard 1965:36). The Bureau of Indian Affairs forbade the Ponca who left Indian Territory from taking any property with them under the penalty of being arrested for theft (Cash and Wolff 1975). Reaching the Omaha reservation in the spring of 1879, they were taken into custody by General George Crook. Outraged citizens publicized the arrest as advocates encouraged the Ponca to apply for a writ of habeus corpus in federal court. Among these was the outspoken assistant editor of the Omaha Daily Herald, Thomas Henry Tibbles, who undertook a campaign to see that the principle of "equality of all men before the law" was upheld (Tibbles 1972:xii). He secured the assistance of two prominent attorneys, John L. Webster and Andrew J. Poppleton. Webster indicated that a writ of habeus corpus could prevent the Poncas from being returned to Indian Territory as such a move would constitute illegal detention. Webster and an associate, Andrew J. Poppleton undertook the Ponca defense. The famous trial of Standing Bear lasted two days. Judge Elmer S. Dundy ruled in favor of Standing Bear, indicating that "an Indian is a person within the meaning of the laws of the United States" and so is entitled to protections afforded to all citizens by the Fourteenth Amendment of the Constitution (Tibbles 1972:vii, 110). He declared that Standing Bear was being detained illegally, and that no rightful authority existed for forcibly removing people to Indian Territory. Standing Bear and his followers were released. "In a suit sponsored by the Omaha Committee and brought by Poppleton and Webster on behalf of the Ponca Tribe against Red Cloud and his band of Sioux, Dundy ruled that the Poncas had a legal estate in the reservation and were entitled to possession of it" (Tibbles 1972:134).

The Ponca attempted to reestablish themselves in their original homeland, although only 530 Ponca remained in Indian Territory. Building homes, obtaining livestock and establishing schools supported the Ponca's efforts to survive, as public sentiment continued to lobby in their favor. The Boston Indian Citizenship Committee, which "grew out of the furor created by the Ponca affair in the late 1870s" appointed five prominent men to investigate the injustices done to the Ponca, the committee finding in favor of the Ponca and against the government (Prucha 1984:612). Helen Hunt Jackson, in Boston during the period when the Ponca furor was at its height, attacked Secretary of the Interior Carl Schurz in a letter in the New York Tribune, and, dissatisfied with his response, launched a campaign against him and his policy in the Boston newspapers. Her famous book, A Century of Dishonor published in 1881 was a condemnation of Congressional action against tribal peoples, but, mailed to all the members of Congress at her own expense, had considerable impact on a new consciousness concerning treatment of Indian peoples.

A full investigation concerning the Ponca was conducted by a committee appointed by the U.S. Senate in 1880 and made its report to President Hayes in 1881, condemning the mismanagement of Ponca affairs. The committee determined that the Ponca should be allowed to remain on their 26,236 acres of land in Knox County, Nebraska which was then given in individual allotments to those who remained (Cash and Wolff 1975:60). Every member of the tribe "who so desired tc select an allotment on the old Dakota reservation" received an allotment of 160 acres (Tibbles 1972:134). Congress appropriated $165,000 the following year to compensate the Ponca and make restitution for wrongs committed, and restoring to Standing Bear and his followers their old homeland on the Niobrara (Fletcher and LaFlesche 1911, Howard 1965). Those Ponca who chose to remain in the north, numbering approximately 225, became the Northern Ponca Tribe, separated from the Southern Ponca (approximately 600) who had remained in Indian Territory (Dorsey and Thomas 1910:279).

Shortly after this final reservation establishment, during a wave of assimilationist activity, Senator Henry Dawes introduced the Dawes Allotment or Severalty Act of 1887, whose aim it was to force Native Americans to assume responsibility for their self-sufficiency by owning their land individually. Reservations were divided into allotments normally of 160 acres per family or 80 acres per individual. "Surplus" land was then opened for sale which meant it was now taxable. Unable to pay the taxes on their lands, many Indians were forced to sell their allotments to non-Indians, resulting in "checkerboarding" of reservations throughout the country and a loss of some 91,000,000 acres of Indian land. Unlike other tribes who received reservations which were later allotted, land given to the Ponca within the limits of the Great Sioux Reservation on March 2, 1889 (25 Stat. 888) was given in allotments of 320 acres per family head or one-fourth of a section to each single person over eighteen. Each living orphan child under eighteen received an eighth of a section (Kappler 1904:332-333). As with other tribes, Ponca land was allotted, and, as also occurred among other tribes, was largely lost to

Ponca owners through sales to non-Indians under the provisions of the Allotment Act (Cash and Wolff 1975).

During the 1950's, Indian policy within the U.S. government was aimed at the assimilation of American Indian peoples into mainstream society. The philosophy was that by releasing Indian peoples from the limitations of tribal membership, they would be freer to assimilate into the dominant society. House Concurrent Resolution no. 108 became the vehicle by which termination of tribes was accomplished. Adopted on August 1, 1953, it declared that

> it is the policy of Congress, as rapidly as possible, tke the Indians within the territorial limits of the United States subject to the same laws and entitled to the same privileges and responsibilities as are applicable to other citizens of the United States, to end their status as wards of the United States and to grant them all of the rights and prerogatives pertaining to American citizenship (67 United States Statutues B 132; House Report no. 841, 83-I, serial 11666).

The Termination Era (1945-1962) promoted an end to the special federal-tribal "trust" relationship enjoyed by the tribes, releasing Indians from the "disabilities and limitations" of being Indian. In this manner one hundred and nine tribes were terminated, affecting 1,362,155 acres of Indian land and 11,466 individuals. In April of 1962, Senator Church introduced a bill calling for the division of tribal assets between the Northern and Southern Ponca and the termination of the trust relationship to the Northern Ponca band (Howard 1965). On September 5, 1962, Public Law 87-629 (76 Stat. 429) was passed by the 87th Congress, legislatively terminating the Ponca tribe of Nebraska (Kappler

1970, LeRoy and Tyndall 1987). On October 18, 1966, Acting Secretary of the Interior Charles F. Luce signed the bill, effective three days following its publication in the Federal Register, removing 442 Ponca from the tribal rolls, dispossessing them of 834 acres, and ending their entitlement to the special services to which other Indians were entitled (Kappler 1970:1561). Thus began the process of tribal decline:

> What transpired as a result of termination has been a decline in the customs and traditions of the Ponca Tribe, the loss of federal services, employment-job training, health services for the young and elderly, Indian child welfare protection, higher education and youth programs. The loss of recognition as American Indians has had the most profound effect on tribal members and their descendents (LeRoy and Tyndall 1987, p.2, 3).

What some may have seen as a "rational" step, justified because "there were so few of them...that it no longer seemed worthwhile for the government to continue (the) relationship on a formal basis", turned out to be an ill-conceived act, with little consideration given to the fate of the Ponca (Cash and Wolff 1975). No longer eligible for any federal services as a result of their termination, the Northern Ponca began a social and economic decline which tribal members believe is no longer tolerable and must be reversed.

Although terminated, the Ponca tribe formed a Cemetary Committee to care for the traditional Ponca burial ground. While the reservation was lost in the termination process, the cemetary remained as a tribal land holding and the tribe's access to this sacred site was not terminated. The Ponca Cemetary remains an important spiritual and cultural landmark for the large number of Northern Ponca who still reside in this area.

Part III: The Contemporary Ponca: Socio-economic Data

Today the Ponca are separated into the Northern and Southern Ponca tribes. The Southern Ponca reside in Oklahoma, primarily near the towns of Ponca City and White Eagle. Their population numbers now exceed 1000. They retain strong cultural ties with their language and tradition, and are considered conservative in their having retained and preserved their culture despite acculturation (Howard 1965, Powers 1972). Dancing societies such as the Heđuska persist, along with ceremonies, costumes, ritual paraphernalia, and traditional singing and drumming. The Poncas hold an annual pow-wow where many of their traditions blend into a celebration of the vitality of Ponca culture.

The Northern Ponca have faced considerably more difficulty keeping their culture intact because of their history of removal, their intensive exposure to disease, and their ultimate termination. Despite these obstacles, however, the Ponca have retained strong ties to their indigenous tradition. Only nine years after the proposed termination of the Ponca was initiated, efforts were begun to restore the Ponca to full tribal membership. In 1971, the Ponca Tribe was (once again) formed and incorporated (see Part IV for a discussion of Ponca efforts at tribal restoration and federal recognition). In May of 1989, the Northern Ponca Restoration Committee conducted a survey to assess the economic, social and health conditions of their tribal members (see Appendix for survey). Two hundred and fifty surveys were mailed, of which approximately one-half (124) have been received. (Incoming surveys sometimes indicated the location of yet other Ponca tribal members whose location had been unknown; these individuals are now being contacted to complete surveys). The results of the surveys received are presented below. While the responses reveal trends concerning the health and welfare of modern Ponca, it should be kept in mind that survey results are likely to be biased in favor of the more educated Ponca. Those respondents who returned surveys are likely to possess more education and were therefore more willing to return surveys. Those possessing less education are also less likely to have returned the surveys, therefore the results may show the Ponca's economic status to appear better than it actually is.

Survey Data

Although 124 surveys were returned, the data reflect only **122 households** (two were mailed back on behalf of deceased individuals). The total population of Ponca represented in the surveys is **394**, of which **264** are adults and **130** are minors. Most households possess an average of 3 persons per household, with 74% of respondents having more than 2 adults in their household (this probably reflects respondents having extended family structures).

Ponca respondents indicated heads of households reside in twenty-four different states, including Puerto Rico, Alaska and Hawaii. Fifty-four percent of respondents reside in Nebraska (28.69%), South Dakota (19.67%) and Iowa (5.73%). With better than half of the Northern Ponca contacted for this survey still residing in the plains near their ancestral home, prospects of future active tribal membership are greatly increased. The Northern Ponca population is fairly evenly divided between urban and rural life, with 34% living in large cities, 40% living in small towns, 11% residing in suburbs of large cities, and 14% living in rural areas. Only .85 are living in areas designated as "other", and this generally means on a reservation.

Education

Respondents' **education** levels reflected that over 77% of heads of households had completed a high school education (or GED), with 25% of those having completed schooling beyond the high school level. Of adults other than heads of households, 70% had achieved a high school education.

Despite the seemingly high percentage of Ponca having completed their high school educations, some respondents mentioned a desire to pursue higher education, but that termination had adverseley impacted their eligibility for financial aid:

> "I feel that I have been denied education wise because of termination. I have started going to college here in Mission and have qualified for higher education grants or scholarships that were only for students that are enrolled members of a tribe" (tribal member from South Dakota).

> "In 1987 I applied for money for college through BIA. I was denied because I was not from a federally recognized tribe" (tribal member from Nebraska).

Health care

The **health status** of the contemporary Ponca is less impressive than the education: while 87% of households have visited a doctor (and 73% a dentist) within the last year, fully 40% of households were unable to see a doctor when they needed to within the last one year. Most respondents listed "no insurance" or "no money" as the reason. Some comments taken from surveys reflect how the loss of tribal status had adversely affected Ponca tribal members' ability to obtain health services:

> "We have been refused medical service because were no longer an Indian tribe, at the U.S. Public Health Service Hospital" (tribal member residing in Alaska).
>
> "My husband...was a Santee Sioux, and I had access to the PHS hospital--Winnebago, Nebraska...But when I tried to get access to the PHS hospital in Wagner, South Dakota, I was refused because the Northern Ponca tribe was terminated as of the 60s" (tribal member from South Dakota).
>
> "At one time, our family was entitled to medical and dental benefits through USPHS hospital at Mt. Edgecumbe, Alaska. But, those benefits were denied to us sometime after 1983 and since that time we have not been "eligible" for any benefits" (tribal member from Alaska).
>
> "My son has been denied services in Oklahoma for him and his child. When he did some inquiries he was denied because of termination" (tribal member from Georgia).
>
> "A Northern Ponca cannot go to...the PHS hospital in Wagner, South Dakota and receive adequate treatment. They will reject you right at the front desk. When they ask 'what tribe are you?'. Be it health or dental care. I truly believe an Indian is an Indian, what right do you have to turn me away because I'm a Northern Ponca and you're a Yankton Sioux Indian...I feel myself and family doesn't get adequate health and dental care because 1) no insurance and not all insurances cover this 2) no funds" (tribal member from Nebraska).

"Since the termination of the tribe, we have lived in poverty. I've had two surgeries in the last three years and I am supposed to have another one. My husband was hospitalized for kidney stones and at the time we had no insurance and still owe. We were turned away from the Yankton clinic because of outstanding bills. We still owe bills from some of the children when they were born" (tribal member from South Dakota).

"I have a lot of unpaid medical bills because of the termination. I have been refused medical service by PHS hospital in Wagner, South Dakota" (tribal member from South Dakota).

"We live on the Arapahoe and Shoshone Reservation. Because of the termination, we are not eligible for dental, health or eyeglass service or any courtesy benefits provided by the BIA" (tribal member from Wyoming).

"Some of my family reside on the Santee Sioux Reservation and are denied services that are provided by IHS. In life threatening situations, an ambulance from a neighboring town has to be called to transport them to a hospital" (tribal member from Nebraska).

"Evelyn has been a widow for some time now, 11 years. She used to go to PHS, Wagner, South Dakota when her husband was living. And after he was deceased up until July of 1989. They informed her she can no longer use their services because she is terminated, and she has to pay. This makes it very difficult for Evelyn to go see any doctor because bills are so high. Now she has to travel 90 miles to a community health center which she can't always keep appointments because of gas, etc. (tribal member from South Dakota).

"I have an allergy to the Sun. I was able to receive help through special services through medicaid till I was 21. My job I have now doesn't cover this and am unable to receive help and the expense is too big and I don't make enough money" (tribal member from Nebraska).

Survey results showed that 40% of household heads reported one member of their household being hospitalized in the last year, and 35% reported an illness or injury in their family that prevented that person from attending work or school. Diabetes occurs in households of 27% of respondents, consistent with high rates found in other American Indian communities. High blood pressure occurs in 43% of households; arthritis/rheumatism in 33%; hearing problems in 34% of households; heart disease in 11%; dental problems in 57%; allergies and asthma in 39%; and physical disability in 16%.

Most Ponca must assume the responsibility to purchase medical insurance--63% of all persons represented in the survey (394) were covered by some type of insurance; however 24% of heads of households indicated that they had no insurance coverage for any member of their household.

The lack of access to medical care is a serious concern of the Ponca, for whom restoration of tribal status would again provide access to PHS health care. Free access to health facilities would enable eligible members to receive health care with no additional financial burden imposed. Since decision-making about whether to seek medical assistance is normally made based on one's hope of being able to pay, health care can and would be sought routinely, thereby encouraging preventive health care and ultimately lowering health care costs.

Economic Welfare

Economically, the Ponca have suffered as a result of their loss of tribal status as well. Twenty-four percent of heads of household (nearly one-quarter) live below the poverty line and thirty-one percent of individuals fall below the poverty line (U.S. Bureau of the Census 1989:420). Nearly three-quarters--74%--have a total family income of under $25,000 per year, broken down as follows:

a.	less than $4000	12.17 of households
b.	$4000 - 7999	15.65 of households
c.	$8000-11,999	13.91 of households
d.	$12,000-15,999	14.78 of households
e.	$16,000-24,999	17.39 of households
f.	$25,000 or more	26.09 of households

Employment problems have plagued Northern Ponca tribal members since their termination. Presently 29% of all respondents and 43% of adults are employed full-time, while 14% are employed part-time. This means that 57% of adults do not have full-time employment.

Several tribal members indicated in the survey that their loss of federal recognition had harmed their economic status through their being denied permission to provide bids on jobs because of no longer having tribal status. Respondents stated:

> "Indian 'set aside' construction projects have been available to my construction company but cannot be bid on due to the...act making the requirement that I be a member of a federally recognized tribe. The Ponca tribe is not federally recognized, and even though I am an Indian, I am not allowed to bid on these projects" (tribal member from Alaska).
>
> "In 1985 I inquired about a loan when we were in financial trouble and was told we were no longer a tribe for it was terminated and no help was available" (tribal member from South Dakota [farmer]).
>
> "Yes my business was denied bidding on work because we gave up our tribal rights" (tribal member from Alaska).

For the majority of Ponca respondents, income is earned by household members (in 76% of cases). ADC is received by 12%, and

39% depend on income from social security. Although 69% of Ponca are buying their own home, 75% indicated that their homes were in need of major or minor repairs.

Heritage and cultural recognition

Finally, tribal members were asked whether termination of their status as a recognized tribe had affected their continued observation of their traditional customs. Only 21% indicated that they continued to observe their traditions following termination. Converseley, **the majority of respondents--86%--believed that termination of their tribe had caused a loss of heritage in their family**. Bitterness was not uncommon in respondents' remarks:

> "Where we live the Santee are prejudiced against the Ponca and refuse to help out and if they do help they let us know and constantly remind us we're living on their reservation! Their land!...All the younger generation was against termination in the first place. When the older people told us our vote didn't count we walked out of the last meeting. That was our half of the people there at the meeting. Now they're all dead and gone and we have to live with their mistakes" (tribal member from Nebraska).

> "I feel that whoever was responsible for this action should be HUNG! Our pride and respect was thrown out the window along with our heritage...Rejection is a painful and psychological experience, knowing that your skin, personality and emotions are INDIAN and you can't prove it. We are caught up in a situation that can't be heard or seen because there is nothing to back us, or anyone to answer to. All I know is that I'm INDIAN and Proud, no matter what the consequences, and that's one thing no one can take away (tribal member from South Dakota).

One theme which emerged repeatedly in the surveys was how termination adversely affected Ponca adults' ability to impart traditional values and practices to the children. Lacking a community where language, cultural traditions and religious activities could be shared, Ponca youth have begun to lose touch with their heritage and sense of identity, a situation deplored by respondents. Statements commonly were made such as "the major loss to my family has been our cultural heritage--we know very little of the tribe's history and customs, and less about the events leading to the tribe's termination". Another said:

> "We are now at a loss as to who we are. Our cultural background has suffered a painful death. How can the government say to me I am not Ponca by the movement of a pen? How can the government tell me, I am no more?
>
> "I think we need to try to preserve our heritage before it's gone from us forever. I'm proud to be an Indian and very proud to say I'm a Ponca. I would like to learn my language and my children to learn it. So many of our people are dying. We need our reservation to bring us back together" (tribal member from Washington).

There is little question that termination has caused not only hardship in terms of political identity, but in terms of access to services to which other tribes are legally entitled. Sixty-six percent of the survey respondents said that the loss of federal services had affected their families, as follows:

education: 64%
health: 63%
employment: 37%
cultural: 56%
child welfare 17%

When asked if they felt a reservation should once again be established for the Northern Ponca, 90% answered that it should.

Of this 90%, 97% believed that Niobrara, Nebraska--the original Ponca homeland-- was the appropriate site for the establishment of a reservation. Additionally, 97% favored the development of an economic plan to assist tribal members to improve their overall economic condition.

Part IV: Request for Congressional Restoration

During the 1970s, members of the Ponca tribe, unwilling to accept their status as a terminated tribe, initiated the process of receiving federal recognition, enabling them, once again, to be eligible for federal services now unavailable to them. As a terminated tribe, the Ponca lost valuable federal support which enables other tribes to thrive. In the previous section, it was demonstrated that in the areas of health, education and economic areas, tribal members have been denied services which would have improved their welfare because of their having lost status as a federally recognized tribe. "The loss of recognition as American Indians has had the most profound effect on tribal members and their descendents" (LeRoy and Tyndall 1987). Loss of tribal identity resulted in a decline in the customs and traditions of the Ponca; the loss of employment-job training, free health care services through the Indian Health Services branch of the Public Health Service; eligibility for low-cost housing programs and education opportunities; protection from alienation of Indian youth from their families under the Indian Child Welfare Act; and loss of a collective land base to serve as a cultural center of tribal life.

Meetings held with tribal members in Omaha and Norfolk, Nebraska during the 1970s enabled the Ponca to discuss their future and consider the possibility of restoration. The Nebraska Indian Commission conducted a survey of former tribal members to assess the problems encountered following the termination of federal services.

In 1986, representatives from the Native American Development Corporation in Omaha, the Lincoln Indian Center, Sequoyah, Inc., the National Indian Lutheran Board and the Ponca Tribe met to discuss their status. The National Indian Lutheran Board agreed to fund a mail-out signature drive of all former tribal members to assess their views of prospective restoration. This was done the following year, resulting in the receipt of over 200 post cards and 150 petitions signed in support of the Ponca Restoration effort (LeRoy and Tyndall 1987). In December of 1986, the **Northern Ponca Restoration Committee** was formed, and on August 19, 1987, was formally incorporated as a non-profit organization in Nebraska, whose specific charge was:

a) "to perpetuate the identity of the Tribe Native Americans known as the Ponca Tribe of Nebraska

b) to seek to establish said tribe as a State recognized tribe of Native Americans

c) to seek to reinstate said tribe as a federally recognized tribe of Native Americans

d) to perpetuate the culture, traditions, and customs of the Ponca Tribe of Nebraska" (LeRoy and Tyndall 1987:3).

On September 14, 1987, a 501(c) (3) application was submitted to the Internal Revenue Service for non-profit status for the Northern Ponca Restoration Committee, which was approved in January of 1988 and in April of 1988, the Nebraska Unicameral passed Resolution #428, which officially recognized the Ponca tribe. The resolution extended state recognition to the Ponca tribe, recognized the members as American Indians, and supported their efforts for federal recognition. In September of 1989, the Northern Ponca Restoration Committee was notified by the Bureau of Indian Affairs that eighty-eight acres of former reservation land was still held in trust by the U.S. government for the Northern Ponca tribe.

Six criteria must be met before a tribe can be eligible for federal recognition. The criteria are as follows:

(1) There exists an ongoing, identifiable community of Indians who are members of the formerly recognized tribe or who are their descendents.

(2) The tribe is located in the vicinity of the former reservation.

(3) The tribe has continued to perform self-governing functions either through elected representatives or in meetings of their general membership.

(4) There is widespread use of their aboriginal language, customs and culture.

(5) There has been marked deterioration in their socio-economic conditions since termination.

(6) Their conditions are more severe than in adjacent rural areas or in comparable areas within the state.

Criterion 1. As demonstrated by the survey, 394 Ponca have already been identified, with only half the surveys having been received. Although they inhabit twenty-four different states, _fifty-four percent_--more than half--of the Ponca respondents reside in the Nebraska, South Dakota and Iowa region of the Plains. It is interesting to note that the largest group--nearly 29%--continue to reside in the state of Nebraska, with another 20% living in adjacent South Dakota. This very large concentration of Ponca demonstrates that there is most certainly an identifiable community; however, because of termination and the loss of their reservation, they are somewhat dispersed. Survey results show their desire to once again be associated with their aboriginal homeland--near Niobrara, Nebraska, as demonstrated by the overwhelming response--90%--of respondents who wished to once again have a reservation near there. Of the 90%, nearly all--97%--determined that Niobrara was the appropriate area for the establishment of a reservation.

Ponca residents in the three-state area are also clustered in Lincoln, Omaha, Norfolk, Verdigre, and the Santee Sioux Reservation near Niobrara, Nebraska. While those on reservations are clearly identified as American Indian, they are denied services on the reservations on which they reside because they are not members of a federally recognized tribe.

Criterion 2. Despite the 1962 termination of the Ponca which forced tribal members to establish homes away from the reservation, the location of more than half of the tribal members in the Nebraska/South Dakota/Iowa areas, on the Santee Sioux Reservation, and near the towns of Niobrara, Verdigre, Omaha and

Lincoln, clearly demonstrate that tribal members are still in the vicinity of their aboriginal territory or former reservation and still heavily concentrated near their aboriginal homeland. As indicated above, nearly all survey respondents still identified with an aboriginal homeland and believed that if a reservation were once again established, it should be near Niobrara, Nebraska. Because of the location of the Ponca ancestors in the cemetary near Niobrara and emotional, historic and cultural ties with the aboriginal homeland, the Ponca are clearly still strongly affiliated with their native area of habitation.

Criterion 3. Despite the tribe's termination in 1962, immediately a Ponca Cemetary Committee was established to continue to perform some tribal functions. Only nine years after termination, the tribe began efforts to restore the Ponca to full tribal membership. Tribal members held community meetings, elected representatives, conducted a signature drive, and, in August of 1987, formed the Northern Ponca Restoration Committee to intensify efforts to obtain restoration of their federal status. In Niobrara, Nebraska, the Village Board passed a resolution supporting the Committee's efforts. The tribe has developed a tribal roll and criteria for membership, and has received official recognition as a tribe and as American Indians from the State of Nebraska Unicameral.

Criterion 4. The termination of the Ponca Tribe did not stop the tribal members from practicing their language, customs and culture. The Poncas continue to hold pow-wows where traditional dancing (societies), singing and drumming are performed. Dance and language classes have been held to impact traditional knowledge and values to the young. There is no question that termination negatively affected the tribe's ability to uphold their ancestral customs as their community-centered life was ended. In the previous section, respondents' comments illustrated some of the difficulties of maintaining indigenous tradition as a dispersed nation. However, nearly all respondents indicated a strong desire to teach the native language and culture to the young.

Criterion 5. Survey data show that economically the Ponca have suffered continual economic decline since termination. Loss of farmland and forced relocation of Ponca tribal members following termination has negatively impacted their socio-economic status. Having a 57% unemployment rate, Ponca are faring poorly, affecting their ability to provide adequate medical care for their families (Nebraska's unemployment rate is below 3% [Nebraska Department of Labor 1989]. Additionally, lack of status as a federally recognized tribe has resulted in Ponca Indians inability to bid on construction jobs offered to other tribes, to obtain loans or grants to pursue a college education, or to receive health care at Indian Health Service Hospitals (or others). Nearly one quarter of Ponca survey heads-of-households respondents live below the poverty line as do 31% of individuals (U.S. Bureau of the Census 1989). By comparison, only 10% of

Nebraskans live below the poverty line; in the Lincoln area, only 1% live below the poverty line and in Omaha only 2% do (Nebraska Social Indicators 1986). Seventy-four percent of Ponca respondents have a total family annual income of under $25,000 per year, despite households possessing an average of three persons per household. Clearly, termination has resulted in a significant decline in socio-economic conditions for the Ponca. Restoration of tribal status would once again enable Ponca members to receive federal services.

Criterion 6. The Northern Ponca population is fairly evenly divided between urban and rural life--34% live in large cities, 40% live in small towns, 11% live in suburbs of large cities, and 14% live in rural areas. With 24% of heads of households living below the poverty line and 31% of individuals living below the poverty line (U.S. Bureau of the Census 1989), there is no question that Ponca tribal members live in more severe conditions than non-Ponca in comparable rural or urban areas (see Criterion 5 for comparative percentages for numbers of individuals below the poverty line for Lincoln and Omaha as well as the state of Nebraska.) In Nebraska where the majority of Ponca reside, state unemployment rates are under 3%--a striking contrast with the 57% unemployment rate for Ponca tribal members across the United States.

The Ponca tribe, terminated by Congress in 1962, has continued for the last seventeen years to retain their cultural, linguistic and political ties to their aboriginal culture. Their persistence in the face of overwhelming efforts to reduce their numbers and disperse their members has been remarkable. Since their removal south following the loss of their reservation in the 1860's, they have struggled and perservered to retain a political identity, and have done so, despite the loss of a land base. Today, the Northern Ponca have established their viability and vitality and are requesting restoration of their tribal status to return to them eligibility for federal services to which other American Indians are entitled. In so doing, the Ponca Tribe can increase their economic, educational, and health status, thereby enabling them to better achieve a strong social and political community.

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APPENDIX

Ponca Survey
May 27, 1989

NORTHERN PONCA RESTORATION
SOCIAL/ECONOMIC SURVEY

1. The following survey will be used to evaluate the needs of the tribal members and descendants. All questions should be completed to the best of your knowledge. Since some of the questions in this survey concern each person in your house, we'd like you to list everyone who is living in your household now. Please give the first name of each person, the date of birth, sex, the relationship to you (spouse, son, friend, etc.) and the highest grade completed in school. Please start with yourself.

FIRST NAME	DATE OF BIRTH MO/DAY/YEAR	SEX:(CIRCLE) MALE	FEMALE	RELATIONSHIP TO YOU	HIGHEST GRADE COMPLETED
__________	__/__/___	1	2	YOURSELF	__________
__________	__/__/___	1	2	__________	__________
__________	__/__/___	1	2	__________	__________
__________	__/__/___	1	2	__________	__________
__________	__/__/___	1	2	__________	__________
__________	__/__/___	1	2	__________	__________

The next questions regard the health care needs of your family.

2. During the last 12 months did anyone in your household see a medical doctor? (Circle one number)
   1. NO
   2. YES

3. During the last 12 months did anyone in your household see a dentist? (Circle one number)
   1. NO
   2. YES

4. Thinking back over the past 12 months, was there any time when someone in your household should have seen a doctor but for some reason did not? (Circle one number)
   1. NO
   2. YES

   If the answer is yes please explain? (No insurance, etc.)

5. Was anyone in your household in the hospital because of an illness or injury anytime in the last 12 months? (Circle one number)
   1. NO
   2. YES

   Please give name/age ______________________________ injury or illness ______________________________

6. Has any member of your household missed school or work or any other activity because of illness or injury any time in the last 12 months? (Circle one number)
1. NO
2. YES
Please give name/age illness or injury
____________________ ________________________

7. Has any member of your household missed school or work or any other activity because of illness or injury any time in the last 12 months? (Circle one number)
1. NO
2. YES
Please give name/age illness or injury
____________________ ______________________

8. Below is a list of health problems or conditions. Please indicate whether or not anyone in your household has been treated or diagnosed as having the following problems or conditions. (Circle YES or NO for each)

Does any one have:

a. Diabetes.............................	YES	NO
b. Tuberculoses.........................	YES	NO
c. Cancer...............................	YES	NO
d. Heart disease.........................	YES	NO
e. High blood pressure..................	YES	NO
f. Stroke	YES	NO
g. Arthritis/rheumatism.................	YES	NO
h. Emphysema............................	YES	NO
i. Ulcers...............................	YES	NO
j. Vision problems......................	YES	NO
k. Hearing problems.....................	YES	NO
l. Dental problems......................	YES	NO
m. Allergies/asthma.....................	YES	NO
n. Alcoholism...........................	YES	NO
o. Drug addiction.......................	YES	NO
p. Physical disability..................	YES	NO
q. Other (List _________________________		

9. Please indicate whether or not anyone in your household is covered by the following types of insurance:
(Circle YES or NO)

	SOMEONE COVERED	NO ONE COVERED
a. Private insurance such as......... Blue Cross/Blue Shield, etc.......	YES	NO
b. Insurance provided by an employer.	YES	NO
c. Medicare/Medicaid.................	YES	NO
d. Public assistance.................	YES	NO
e. Other (Describe _____________________________		

10. How many members of your household are covered by some type of medical insurance?
    __________ Members of the household are covered.

11. Is anyone in your household entitled to any Veterans Benefits? (Please circle)
    1. YES
    2. NO

12. Approximately, what was your total household income before taxes in 1988? (Circle one number)
    1. LESS Than $4,000
    2. $4,000 to $7,999
    3. $8,000 to $11,999
    4. $12,000 to $15,999
    5. $16,000 to $24,999
    6. $25,000 AND OVER

The next set of questions has to do with household employment.

13. Please list the first name of each member of your household who has worked anytime in the last 12-months. Indicate whether the work is full time or part-time, and describe the type of work they do.

	EMPLOYED: (Circle one number)		
FIRST NAME	PART-TIME	FULL-TIME	TYPE OF EMPLOYMENT
____________	1	2	____________________
____________	1	2	____________________
____________	1	2	____________________
____________	1	2	____________________

14. Below is a list of sources of income available to some households and not available to others. Please indicate whether or not each is a source for your household. (Circle one number for each)

a. Money earned by household members.........	YES	NO
b. Aid to Dependent Children/Welfare.........	YES	NO
c. Social Security...........................	YES	NO
d. Retirement Income Program	YES	NO
e. Savings or investment.....................	YES	NO

The next section deals with housing needs.

15. Do you own or rent your home? (Circle one number)
    1. Own/Buying
    2. Rent
    3. Other (Describe ________________________________)

16. Would you say that your home: (Circle one number)
    1. Needs major repairs
    2. Needs some repair
    3. Needs no repairs at all now

17. Is your home located in: (Circle one number)
    1. A Large City
    2. A Suburb of a Large City
    3. A Small Town
    4. A Rural Area

18. In what state and County do you live?
    ______________________________State
    ______________________________County

19. Since the termination of the Tribe do you feel that your family has continued their tribal customs?
    1. YES
    2. NO

20. Do you feel that termination of the tribe has caused a loss of heritage in your family?
    1. YES
    2. NO

21. The termination of federal services, has this affected your household?
    1. YES
    2. NO

22. What federal services do you feel have been needed by your household? (Please circle the ones of concern)
    1. Education
    2. Health
    3. Employment
    4. Cultural
    5. Indian Child Welfare

23. Do you feel a reservation should be established?
    1. YES (Please circle one)
    2. NO

24. If you agree to a reservation, what area?
    1. Niobrara (Please circle one)
    2. Other

The Northern Ponca Restoration Committee is looking into the possibility of submitting an Economic Self-Sufficiency Plan to Congress. The Plan will bring economic development to the reservation and establish added revenue for the tribe. This program will help make the Ponca tribe less reliant on the federal government for funds and promote self-sufficiency for its members.

25. Would you be in favor of this plan?
    1. YES (Please circle one)
    2. NO

This final page concerns the termination and restoration of the tribe. If you or any members of your household have been denied services, or feel that in some way you have been affected by the termination please make your comment.

STATEMENT OF BUD SHAPARD, RESEARCH CONSULTANT TO THE JENA BAND OF CHOCTAW INDIANS AND FORMER CHIEF OF THE BRANCH OF ACKNOWLEDGMENT AND RESEARCH, BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS, UNITED STATES SENATE, CONCERNING S.1918 TO RESTORE THE FEDERAL RECOGNITION OF THE JENA BAND OF CHOCTAW INDIANS OF LOUISIANA.

MARCH 28,1990

Mr. Chairman,

Thank you for the opportunity to comment on S.1918. First and foremost this bill, if enacted, will restore to the Jena tribe legal status which was wrongfully terminated by non-feasance of the Bureau of Indian Affairs fifty-two (52) years ago. If enacted, the bill will not only correct an old injustice done to the Jena Choctaw Indians, but also afford the Jena people the opportunity to move forward with a social and economic development program. That program will not only benefit the tribe but also the parishes surrounding the Jena area.

When the Jena leadership was notified of these hearings, both Chairman Jackson and I were cautioned that it would be important to explain in detail to the committee why the Jena Band should not be required to go through the federal acknowledgment process set forth in 25 CFR 83.

I am afraid the request stems from a misunderstanding of what the Jena people seek. Unfortunately, S.1918 is incorrectly titled and contains some misleading verbiage which would lead you to think that this is a first-time 5 recognition bill for the Jena Band as an Indian tribe. That is not correct. What the Jena seek, in fact, is legislation restoring the tribe's status as a federally recognized Indian tribe which was granted by the Bureau of Indian Affairs in 1938. The purpose of this legislation is to require the Bureau of Indian Affairs to keep the commitment which it made to the Jena Choctaw 52 years ago. I have attached to this statement some suggestions for minor working changes which will clarify the purpose of the bill.

The following is a very brief account of Bureau of Indian Affairs actions in the 1930's. Those actions clearly show that the Bureau made a compact with the Jena tribe which recognized the group and which offered trust land and services that are available only to federally recognized tribes. Although the Jena people agreed to the government's terms, which included removal from the Jena area, the Bureau reneged on its part of the agreement. The unsophisticated Jena leadership of the time did not pursue the matter, and with the advent of the Second World War the tiny Jena tribe was all but forgotten.

From 1934 to 1938, the Bureau of Indian Affairs briefly allocated funds appropriated for the education of Indian children to a contract school for the Jena Band. For budgetary reasons, the Bureau considered cutting these funds in 1937. It is interesting to note that the same Bureau 6 document which allocated funds to Jena also provided allocation to two other tribes in Louisiana, the Coushatta and the Chitimacha tribe, which were subsequently recognized by the Bureau.

Notwithstanding this, after considerable discussion inside the Bureau, a plan was conceived by the Education Division to move the tribe en masse to the Mississippi Choctaw Reservation and place them on lands which had been recently acquired as an addition to that reservation. J. M. Stewart, the Director of the Lands Division, approved the plan in a memorandum to the Education Division dated January 8, 1938. In that memo he wrote: "If the families located in Louisiana (the Jena) are eligible to benefit in the way of land, under the Indian Reorganization Act ... there apparently would be no objection to handling the matter as proposed, inasmuch as these Indians are of Choctaw descent."

Seven months and three days later, on July 11, 1938, the Assistant Commissioner of Indian Affairs Zimmerman wrote the following to the Superintendent of the Choctaw Agency:

> "This will be your authority for transferring as many of these Indians to the Pearl River area in Mississippi as you find it possible to persuade to take up new land. We hope that these transfers may be arranged promptly so as to deal with the entire situation effectively.

In the same letter, the Assistant Commissioner also authorized continued tuition payments for the children of any Jena families which remained in Louisiana. This commitment was also ignored by the Bureau.

Thus the Bureau of Indian Affiars evaluated the Jena Band, determined that they were entitled to trust land and services, and an administrative line officer authorized the provision of both to members of the Band. The Bureau subsequently did nothing. It is very important to note that this was not a remote happening in the distant past. Many of the same people the Bureau acknowledged as eligible in the 1930's, and their children, are still alive. There are no continuity problems with this. It is not a case of some historical tribe dealing with the Bureau and now borderline decendants seeking to recreate the tribe. The Jena Band members are real Indians. Almost 60% of the membership are 1/2 degree or more of Choctaw Indian blood. They are and have been identified as an Indian community since historical times. The tribes' efforts for restoration are supported by several recognized tribes including their nearest Choctaw neighbor, the Mississippi Band of Choctaw.

In the ensuing 52 years, lack of education, ignorance of the options, poverty and isolation have prevented the Jena from taking the necessary actions to have the Bureau

8

fulfill its commitment. In this past year, however, Chairman Jackson acting through the kind offices of Senator J. Bennett Johnston, requested that the Bureau review the Jena case and restore services to the tribe.

The Bureau declined to act or even review the case and listed several reasons why the staff did not want to recognize the group -- "through administrative action outside the Acknowledgment process."

First the Bureau argued that, "Numerous groups have had some federal contact in the past. However, such past contact should not be a reason for granting present federal acknowledgment. Other (unnamed) factors must be taken into account. The actions in this case, while offering federal services of a limited kind, do not in our view constitute clear recognition of status as a tribal entity."

Jena's response to this is that it is true that many groups have been provided services under the auspices of the Bureau, and some, no doubt, undeservedly so. The services which were offered the Jena people, however, were not limited. If the Bureau had fulfilled its commitment to the Jena Band, they would presently be living on trust land at Pearl River and receiving a full range of services to which federally recognized Indians are entitled.

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Although the Bureau does not consider the Assistant Commissioner's letter regarding the Jena as constituting clear recognition of status as a tribal entity, we can recall no less than four (4) groups which were recognized by a letter from the Commissioner: the Sault St. Marie Chippewa Indians of Michigan by letter of September 7, 1972; Upper Skagit Indian Tribe and the Sauk-Suiattle Indian Tribe, both of Washington State, and both by Deputy Commissioner's letter dated June 9, 1972; and the Coushatta Indians of Louisiana, by a letter from the Assistant to the Secretary of the Interior dated June 27, 1973.

The Bureau further argues, "Administrative action outside the established administrative process would set a precedent which would encourage many other petitioners to follow suit claiming one or more unique and/or extenuating circumstances."

Jena's response to this is that perhaps other petitioners would follow suit claiming various circumstances. That is fine, but how many of these groups can produce documentation from the Commissioner's office authorizing them to move on to trust property? It appears to the Jena people that the Bureau has already established a precedent by which groups have been recognized by the Commissioner's letter. The Bureau's refusal to acknowledge the 1938 letter as a clear, unlimited recognition of the 10

Band, indicates that different standards are being applied to different groups. The fact of the matter is the Bureau does not have any standards to determine if a group has been previously recognized and should have been included in the service population over the years without going through the acknowledgment process. That process, however, does not recognize the possibility of previous federal acknowledgment. Absent this, it seems that the precedent is set.

The Bureau also argued that the Jena did not receive as many services as the Coushatta Tribe of Louisiana and that the Coushatta had trust land, therefore, the cases are not analogous. It is true that the Jena did not receive as many services as the Coushatta, but then neither does the Caddo Tribe receive as many services as the Navajo. It does not make them any less recognized. The fact that the Jena Band has no land is the result of the same Bureau's inaction that now says they are not recognized because they have no land. Incidentally, there is a 1974 letter from the Acting Deputy Commissioner of Indian Affairs which states, "A land base is not a requirement for federal recognition."

Aside from these technical arguments, there are two other reasons we feel that it is appropriate for the Jena Band to seek legislation. These are time and money.

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The Bureau, by its own admission, will take the Branch of Acknowledgment and Research at least two years to start processing a "ready for active consideration" petition and by 1991 that time frame is projected to increase to eight years. This is an unconscionable length of time to require a petitioner to wait, especially since by the time the Bureau is able to work with the petition, the experts who helped research and draft the petition would be long gone and would not be available to help the group respond to the Bureau's questions about the research. Even after a petition is put on active consideration, it takes up to three years to complete the process.

Secondly, the cost of preparing a petition has reached exorbitant levels, ranging from $200,000.00 to a half million dollars. Much, if not most, of this money comes from federal grants. The Bureau is currently processing petitions at the rate of approximately 1.5 annually at an annual cost for operating the Branch of roughly $500,000.00. It is not inconceivable to project the cost of completing and evaluating one petition at one million dollars.

Thus the Jena are faced with up to a 13-year wait before a determination would be made on their petition, at an estimated cost to the tribe of an additional $150,000.00 over what they have already spent. This is unreasonble by any standard, especially considering that the Bureau determined that the Jena band was a recognizable and servicable tribe 52 years ago. To require the Jena to go through the acknowledgment process after the Bureau has already determined the band is a servicable tribe is an unexcusable waste of time and money. It appears to me that neither the federal government nor the Jena Band of Choctaw can afford it. We therefore urge the Committee to look favorably on this legislation and support our efforts to restore the status which was granted to the Jena Band in 1938.

This concludes my remarks. I will be happy to answer any questions which the Committee may have. Attached are several key documents to which I have referred and which support the Jena's case, and some suggestions to modify S.1918 to reflect the actual nature of the bill.

JENA BAND OF CHOCTAW SUGGESTED AMENDMENTS TO S.1918.

WE RECOMMEND THAT S.1918 BE AMENDED AS FOLLOWS:

On page 1,

1. After the words, "A BILL", delete entirely the sentence which begins "To provide for," and insert:

"To provide for restoration of the Federal relationship with the Jena Band of Choctaw of Louisiana, and for other purposes."

2. In line 5, page 1, delete the word "Recognition" and insert in its place "Restoration".

3. On page 2, line 11, after the words "Sec. 3", delete the entire sentence beginning with the word, "Federal" and in its place insert:

"The Federal recognition of the Jena Band of Choctaw extended by the Department of the Interior in a letter signed by the Assistant Commissioner of Indian Affairs Zimmermen is hereby confirmed, and the special relationship between the United States of America and the Jena Band of Choctaw is hereby Restored."

4. On page 2, line 24, after the words "real property" and before the words, "that is transferred" insert: "regardless of location,"

5. On page 4, line 7, after the words, "compile a" and before the words, "roll of individuals," insert the word "base"

6. On page 4, line 9, after the word, "Louisiana" delete the period, insert a comma and add the words, "pursuant to the tribe's membership criteria on the date of this act."

7. On page 4, line 12, delete the words, "the Secretary in consultation with"

8. On page 4, line 18, delete the words, "of the Tribe," and insert the same words after the word "bylaws"

9. On line 19, same page, delete the words "adopted under that constitution"

10. (a) On page 5, beginning line 4, after the word "Tribe," delete the following two sentences beginning with the words "Absentee balloting ...," and "Notice of the election ...."

(b) On line 8, delete the words, "In every other regard," and capitalize the word, "the"

(c) On line 11 after "476).," delete the period and add the words, "pursuant to 25 CFR 8___."

11. On page 5, line 14, delete the word, "Secretary," and insert in its place the words, "Interim Council"

12. On page 5, beginning on line 16, beginning with the words, "The election," delete the entire last sentence of the paragraph ending on line 19.

13. On page 5, line 24, after the date "1986," delete the period, insert a comma in its place, and add the words "and all other Federal programs."

14. On page 6, beginning on line 1, delete everything through line 2, page 7.

15. On page 7, beginning on line 3, after "(c)" delete the entire sentence and replace it with the following, "Any real property acquired by or for the Tribe shall:"

16. On page 7, line 5, delete "Any real property acquired by or for the Tribe shall," and after "(1)" insert the balance of the sentence on lines 6 and 7 reading "be taken by the Secretary in the name of the United States in trust for the benefit of the tribe."

17. On page 7, line 9, after "(2)" delete the words "pursuant to such plan"

18. On page 7, line 20, delete the last word of the line, "such" and replace it with the words, "this Act"

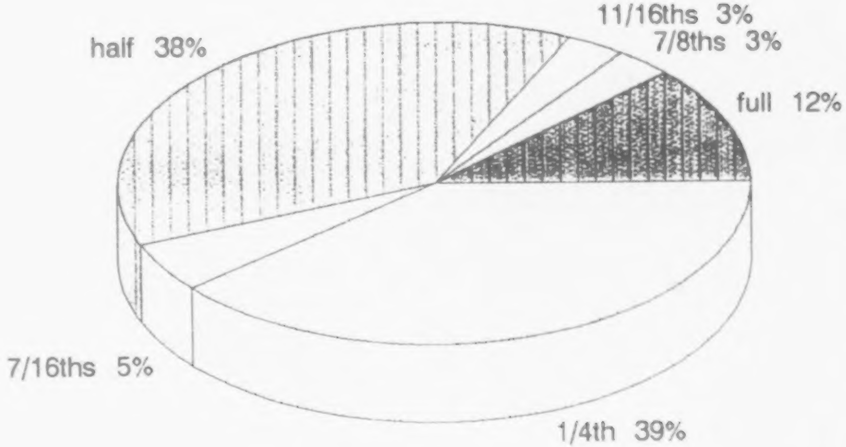
19. On page 7, line 21, delete the word, "plan"

20. On page 7, delete all of lines 23, 24 and 25.

21. Delete all of page 8, lines 1-7.

Jena Band of Choctaw

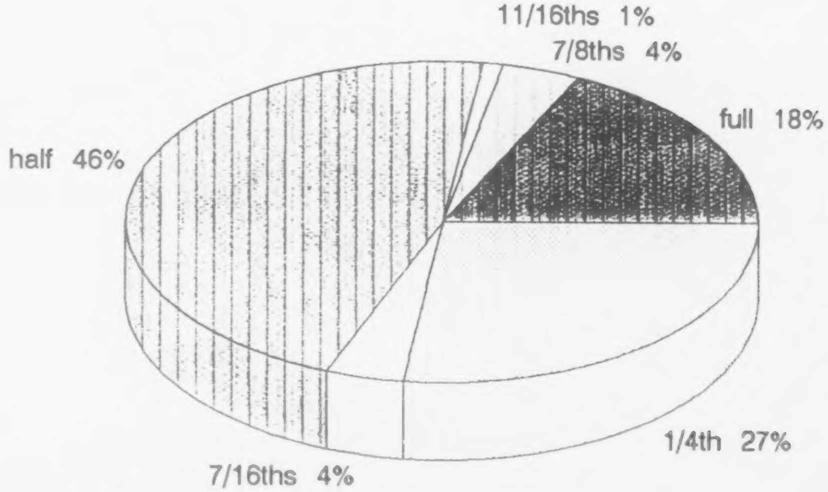
1990 Blood Quantum



As prepared by
Sharon S. Brown
Certified Genealogist

Jena Band of Choctaw

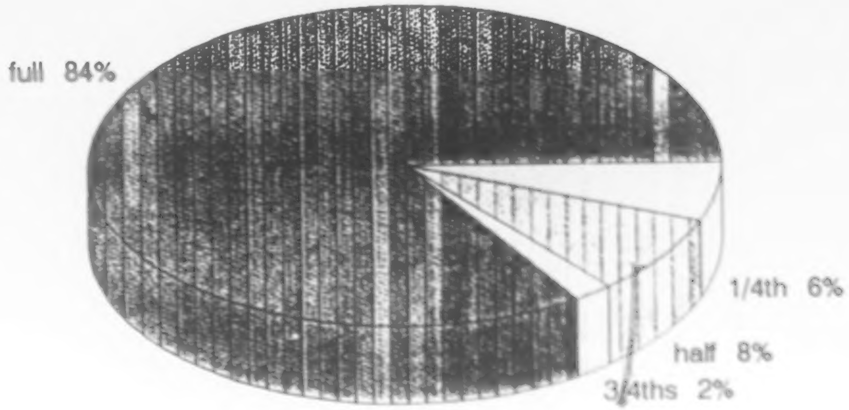
1980 Blood Quantum



As prepared by
Sharon S. Brown
Certified Genealogist

Jena Band of Choctaw

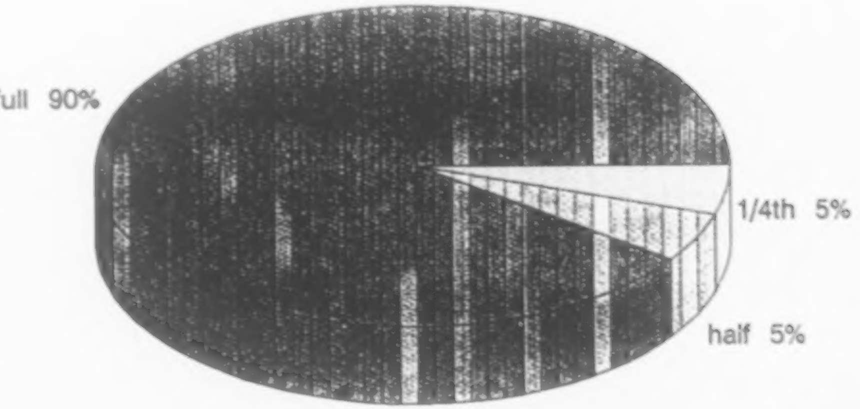
1940 Blood Quantum



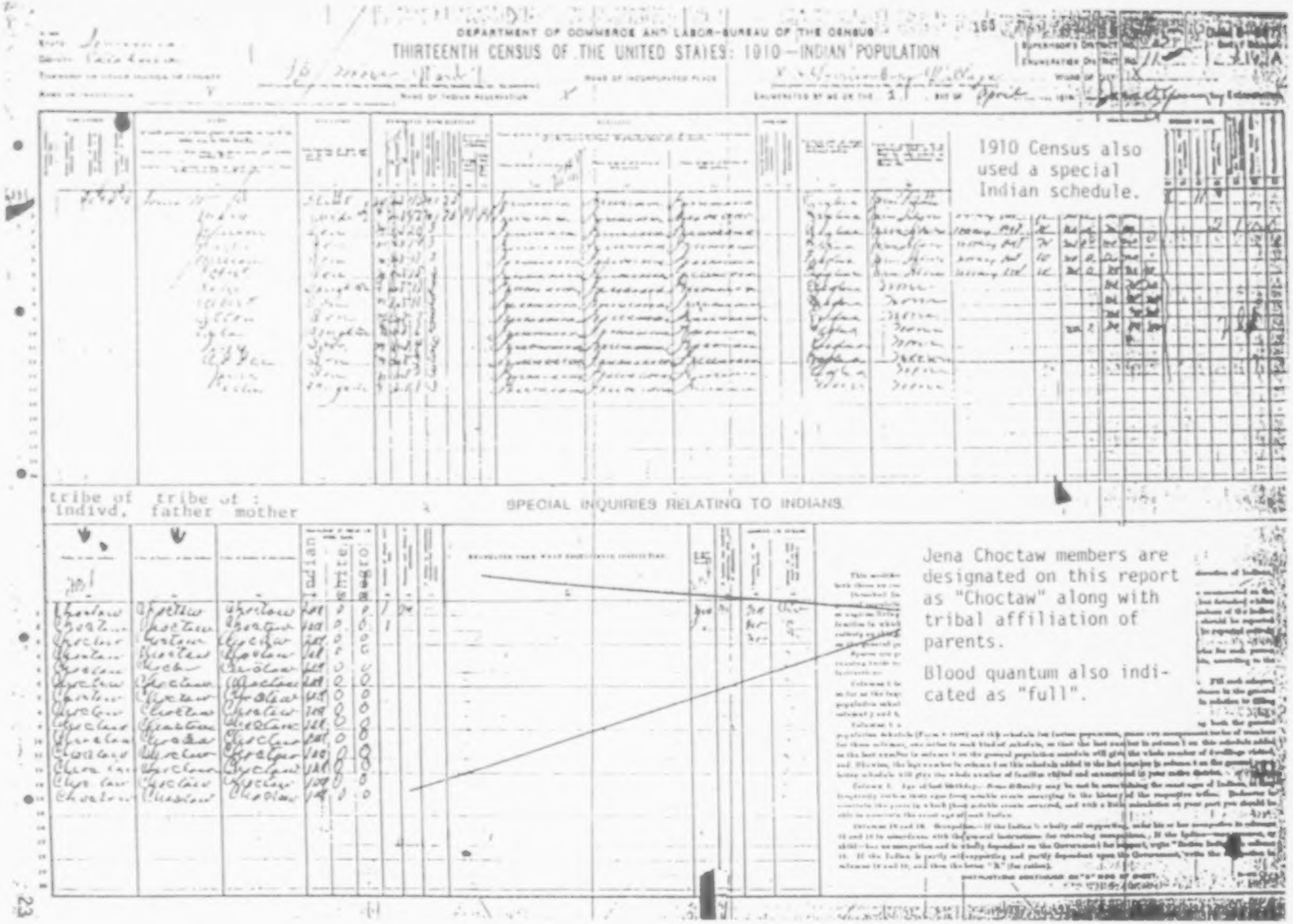
As prepared by
Sharon S. Brown
Certified Genealogist

Jena Band of Choctaw

1900 Blood Quantum



As prepared by
Sharon S. Brown
Certified Genealogist



DEPARTMENT OF COMMERCE AND LABOR—BUREAU OF THE CENSUS

THIRTEENTH CENSUS OF THE UNITED STATES: 1910—INDIAN POPULATION

SPECIAL INQUIRIES RELATING TO INDIANS.

1910 Census also used a special Indian schedule.

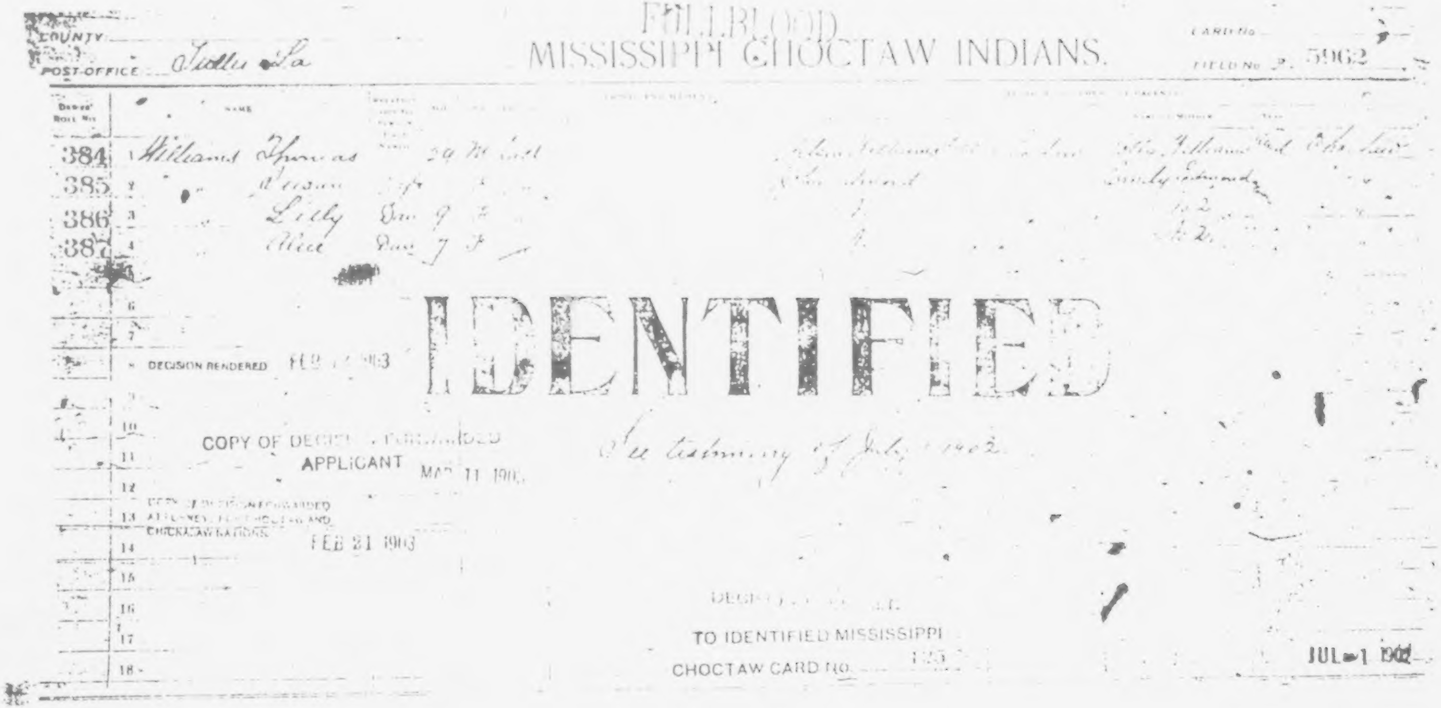
tribe of indivd, tribe of : father mother

Jena Choctaw members are designated on this report as "Choctaw" along with tribal affiliation of parents.

Blood quantum also indicated as "full".

JENA CHOCTAW LEADERSHIP

YEAR	LEADER	METHOD OF SELECTION
1850 - 1910	John Allen	Traditional
1910 - 1916	Sam Gibson	Traditional
1910 - 1916	Thomas Williams	Traditional
1917 - 1933	Bill Lewis	Traditional
1933 - 1950	Will Jackson	Traditional
1950 - 1958	Chris Jackson	Traditional
1958 - 1968	William Lewis, Sr.	Traditional
1974 - 1975	Jerry D. Jackson	Elective
1975 - 1985	Clyde Jackson	Elective
1985 - 1986	George Allen	Elective
1986 - 1988	Jerry D. Jackson	Appointed
1988 - 1991	Jerry D. Jackson	Elective



COUNTY

POST-OFFICE Tiller La

FULLBLOOD
MISSISSIPPI CHOCTAW INDIANS.

CARD No.

FIELD No. 5962

Dawes' Roll No.		NAME					
384	1	Williams Thomas		29	M	Full	[illegible]
385	2	" Susan	Wife		F	"	Emily Edmonds
386	3	" Lilly	Dau	9	F	"	No 2
387	4	" Alice	Dau	7	F	"	No 2

6

7

8 DECISION RENDERED FEB [illegible] 1903

IDENTIFIED

See testimony of July [illegible] 1902

10

COPY OF DECISION FORWARDED
11 APPLICANT MAR 11 1903

12

COPY OF DECISION FORWARDED
13 ATTORNEYS FOR CHOCTAW AND CHICKASAW NATIONS FEB 21 1903

14

15

16

17

18

DECISION [illegible]
TO IDENTIFIED MISSISSIPPI
CHOCTAW CARD NO. 125

JUL 1 1902

OFFICE OF INDIAN AFFAIRS
RECEIVED
MAR 23 1938
17499

January 8, 1938.

Memorandum to Education Division:

This is in reference to that part of the attached letter from Miss Edna Groves, Superintendent of Indian Education, relative to the availability of lands under the Choctaw jurisdiction for certain Indian families now located at Jena, Louisiana.

Some years ago a total of 2,609 acres of land was purchased for the use of Indian families under the Choctaw jurisdiction, Mississippi, under annual acts of Congress. In addition, we are acquiring under the Indian Reorganization Act for the Mississippi Choctaws some 11,000 acres, costing approximately $69,000. The purchases on a considerable portion of this area have already been closed. Administration and utilization of the lands after purchase rests with the Superintendent and the Indians.

If the families located in Louisiana are eligible to benefit, in the way of land, under the Indian Reorganization Act and Superintendent Hector can find land for them, there apparently would be no objection to handling the matter as proposed, inasmuch as these Indians are of Choctaw descent.

(Sgd) J. M. STEWART
J. M. STEWART,
Director of Lands.

1-09-8

Carbon for Indian Off

Education
28406-38
WWB

May 16, 1938.

Memorandum to Mr. Zimmerman.

Subject: Penick School at Jena, Miss.

I think you will be interested in the attached letter from Miss Groves describing the situation which has developed at Jena. This is one of the Louisiana schools for which we began paying tuition several years ago. There are only four or five families of Choctaws, with a total of 22 children of school age. Mrs. Penick discovered them, called them to our attention, and on the basis of the arrangement with her we have been paying at the rate of 50¢ a day for 22 children. She had the WPA help her build a new school. The school is built more like a cottage with a small front room, a dining room, a kitchen, and a bedroom. The school is held in the small front room which has accommodations for not to exceed 12 children, and I doubt that there are ever as many as 12 children in attendance. Certainly there have never been 22 in attendance despite the fact that she has certified that there have been and has collected for that amount in the past.

When Miss Broves and I visited there this spring we found that practically none of the children could read despite the number of years they had been instructed by Mrs. Penick and that there was very little conversational use of English. I believe that the woman is an incompetent teacher and also quite frankly dishonest. I don't understand just why she has made such an issue out of the Indian problem unless it was solely with the idea of creating for herself a job at government expense. It is hard to believe that this was the sole idea because she put in a good deal of time and effort before she got any returns of this kind. I believe that Mr. Hector's suggestion that the families be moved to the Pearl River area where there is new land is an excellent one and that it should be carried out as promptly as possible. While traveling with

REPRODUCED AT THE NATIONAL ARCHIVES

27

Hector, he told me that he had talked the matter over with a number of the Indians and had found them entirely willing to make the move. I don't think that covers all of them, but several of the families at least which should cover most of the children. In the meantime, the suggestion that the youngsters should attend the local school at Jena is probably a good one.

In previous correspondem the Land Division has approved the offering of land to these Choctaws in the new Mississippi land area. If this meets with your approval, I suggest that you sign the accompanying letter to [redacted] approving the program.

Willard W. Beatty,
Director of Education.

REPRODUCED AT THE NATIONAL ARCHIVES

28

Education
29406-38
EWB

JUL 11 1938

Mr. L. W. Page,

Supt., Choctaw Agency.

Dear Mr. Page:

We have received Miss Groves' letter of May 6, reporting on the recent investigation by her and former Superintendent Hector of the Penick School at Jena, La.

This will be your authority for transferring as many of these Indians to the Pearl River area in Mississippi as you find it possible to persuade to take up new land. We hope that these transfers may be arranged promptly so as to deal with the entire situation effectively.

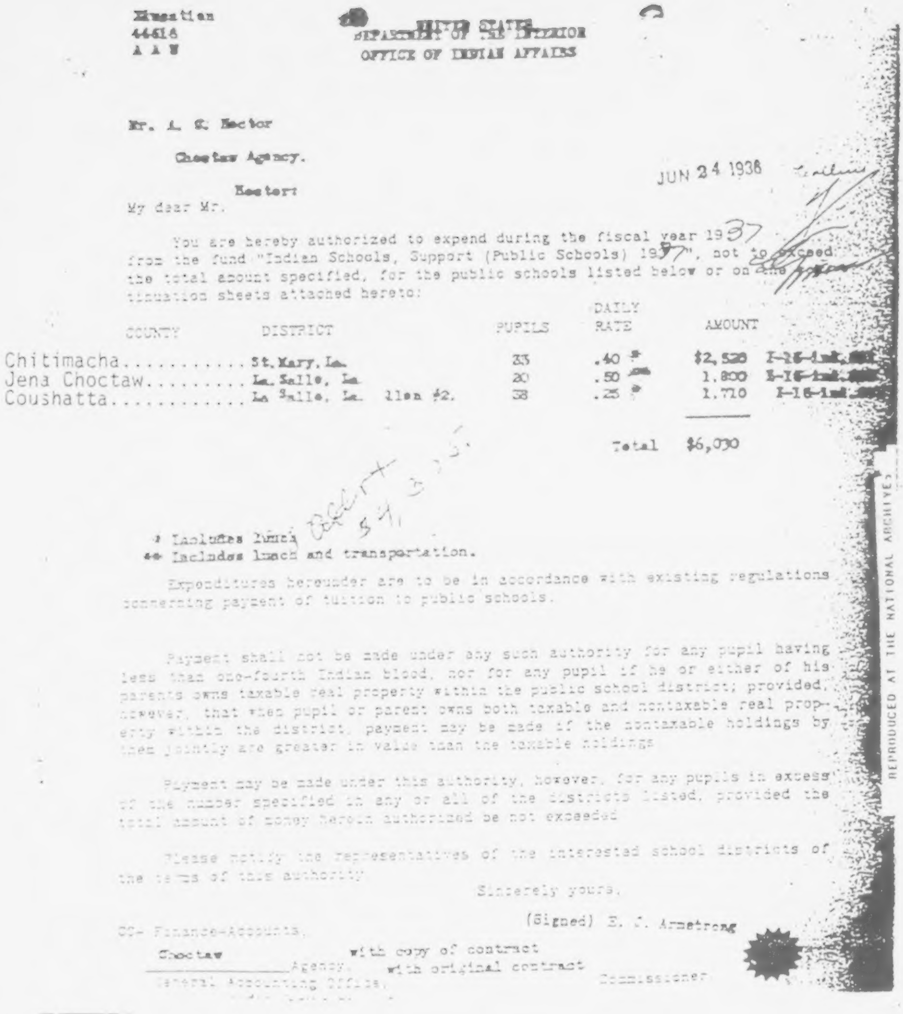
In the meantime, we also approve the suggested arrangement with County Superintendent Russell by which such Indian children as remain in the area be enrolled in the regular white public schools for whom we will continue to pay tuition. After the close of the present year we shall not continue the present arrangement, by which tuition has been paid to help the operation of a separate Indian school under Mrs. Penick's direction.

Sincerely yours,

Zimmerman, Jr.
Assistant Commissioner.

cc Miss Groves
7 map 9

INITIALING OFFICE



Education
44616
A A W

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF INDIAN AFFAIRS

Mr. A. S. Hector
Choctaw Agency.

JUN 24 1936

My dear Mr. Hector:

You are hereby authorized to expend during the fiscal year 1937 from the fund "Indian Schools, Support (Public Schools) 1937", not to exceed the total amount specified, for the public schools listed below or on the continuation sheets attached hereto:

COUNTY	DISTRICT	PUPILS	DAILY RATE	AMOUNT	
Chitimacha...........	St. Mary, La.	33	.40 *	$2,520	I-26-Ind.
Jena Choctaw.........	La. Salle, La	20	.50 **	1,800	I-16-Ind.
Coushatta............	La Salle, La. llen #2.	38	.25 *	1,710	I-16-Ind.
			Total	$6,030	

* Includes lunch
** Includes lunch and transportation.

Expenditures hereunder are to be in accordance with existing regulations concerning payment of tuition to public schools.

Payment shall not be made under any such authority for any pupil having less than one-fourth Indian blood, nor for any pupil if he or either of his parents owns taxable real property within the public school district; provided, however, that when pupil or parent owns both taxable and nontaxable real property within the district, payment may be made if the nontaxable holdings by them jointly are greater in value than the taxable holdings.

Payment may be made under this authority, however, for any pupils in excess of the number specified in any or all of the districts listed, provided the total amount of money herein authorized be not exceeded.

Please notify the representatives of the interested school districts of the terms of this authority.

Sincerely yours,

(Signed) E. J. Armstrong

Commissioner

CC- Finance-Accounts.
Choctaw Agency. with copy of contract
General Accounting Office. with original contract

REPRODUCED AT THE NATIONAL ARCHIVES

****

Awards Letter Indicating Continuation of Indian Education Funds for Jena Choctaw

****

#44042

Choctaw.

o. and No.	District	1937 Pu	1938 Pu	White Pu	1937 Ra	1938 Ra	auth.	allot	P.C. Cost
I-16-ind Mary, La. 664	Charenton	35	30 ~~33~~	-	40	40	2160		.41
Salle, La. 665	Penick	20	23	-	50	50	2070		.40
llen, La. 666	Coushatta	38	40 ~~50~~	-	25	40	2880		.20
			Gotne				$7110		

1937 auth $6030
1937 allot 4305

1938 auth 7110
1938 allot 4740

allot
$4,740

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United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JAN 11 1990

Honorable J. Bennett Johnston
United States Senate
Washington, DC 20510

Dear Senator Johnston:

We are writing in response to your letter of October 17 to Secretary Lujan which requests administrative action to recognize the Jena Band of Choctaw Indians of Louisiana outside the Acknowledgment process.

We regret we cannot act favorably on your request for administrative acknowledgment of the Jena Band. A decision to acknowledge a group as an Indian tribe establishes a perpetual government-to-government relationship between a tribe and the United States. The Federal regulations governing acknowledgment (Part 83 of Title 25 of the Code of Federal Regulations (25 CFR 83)) were adopted in 1978 to deal with requests for acknowledgment on a uniform and reasonable basis. Prior to 1978 such requests were decided on a case-by-case basis. The Acknowledgment regulations were arrived at through the combined cooperation of Congress, the administration, national Indian organizations, and many tribal groups. Since promulgation of the regulations in 1978, no groups have been recognized through administrative action outside the Acknowledgment process.

The Jena Band's situation is not unique. Numerous groups have had some Federal contact in the past. However, such past contact should not be a reason for granting present Federal acknowledgment. Other factors must be taken into account. The actions in this case, while offering Federal services of a limited kind, do not in our view constitute clear recognition of status as a tribal entity.

In your letter of May 17 you drew a comparison between the Jena Band and the Coushatta Tribe, which was recognized by administrative action in 1973. Although there is some similarity between these groups in that they both had educational services of some kind funded by the Bureau of Indian Affairs (Bureau) during the 1930's, the similarities stop there. The Coushattas at one time had trust land. For some years in the 1940's, the Bureau actually operated an elementary school for the Coushatta. From 1940 to 1952 the Bureau contracted with a physician to provide medical care for the Coushattas. Both educational and medical services, however, were withdrawn from the Coushatta in the mid-1950's due to an administrative determination that local resources were sufficient to provide the Coushatta with services equivalent to those available in the non-Indian community. Bureau involvement with the Jena Band, however, appears to have been limited to paying tuition for students in local schools. Given the lack of information since that time and the apparent need for additional information and documentation regarding the Band's social community and political processes, we do not find the correspondence to which you refer to be compelling evidence to justify circumventing the established administrative process which has been designed to resolve such acknowledgment questions.

The Bureau of Indian Affairs, Office of Tribal Services, Branch of Acknowledgment and Research (Acknowledgment) staff has given the Jena Band's acknowledgment petition a preliminary review for obvious deficiencies and significant omissions in accordance with the regulations (83.9(b)). Following that review, the petitioner submitted additional materials to further supplement its petition and respond to deficiencies noted in the preliminary review. The petition was then considered to be ready for active consideration. At that time, the Acknowledgment staff recommended that the group provide some additional information in order to present their strongest case for acknowledgment.

We understand that the need for additional information was also confirmed by an outside contractor who was hired by the Band to review its petition. The group subsequently hired an anthropologist to do a series of community studies to better clarify settlement patterns and family interactions. Mr. Jerry Jackson, the group's leader, has recently informed a member of the Acknowledgment staff that the new studies would not be submitted to the Bureau until after they learned the outcome of your efforts to achieve acknowledgment for them.

Administrative action to recognize the Jena Band outside the established administrative process would set a precedent which would encourage many other petitioners to follow suit claiming one or more unique and/or extenuating circumstances. Further, such action could not be taken without some study of the Jena Band. To make such a study would necessitate "bumping" other petitioners which are now ready and awaiting active consideration and have a higher priority (based on their date of initial filing) than does the Jena Band of Choctaws.

We would like to suggest that you encourage the Jena Band to submit the additional information, which they indicate has been generated in response to weaknesses in the petition's discussion of social community and political processes, as soon as possible.

We appreciate your deep concern for the Indians of the Jena Band.

Sincerely,

/s/ C. L. Henson

Actg Assistant Secretary - Indian Affairs

Jena Band of Choctaws Inc.
P. O. Box 14 Jena, La. 71342-0014 318-992-2717

March 9, 1990

Honorable J. Bennett Johnston
United States Senate
217 Russell Senate Office Bldg.
Washington, D.C. 20510

Dear Senator Johnston,

Thank you for your kind letter of January 31, forwarding the Bureau of Indian Affairs' response to our request for reinstatement to the status as a federally recognized Indian tribe. Your efforts in our behalf will not be forgotten in this part of Louisiana!

As you can imagine, even though the rejection was expected, I must admit I was outraged at the superficial response which the Bureau provided to your letter. The following is information for you to use as you will. We forward it to you partially to give you our view of the Bureau's denail letter and mainly to help you secure passage of legislation that will restore the status to Jena that was promised in 1938.

First, the Jena tribe is not seeking recognition or acknowledgment. We are seeking restoration of a status which was granted to us by the Assistant Commissioner of Indian Affairs in 1938. This seems to be a point totally missed by the Bureau staff.

Secondly, as the Bureau mentions, the Jena tribe did receive only limited Federal services prior to 1938, but the Assistant Commissioner' letter authorized the Jena Band to live on a Federal trust reservation. That in and of itself qualified the Jena Choctaw people, who were mostly full blooded Choctaw at that time, for the complete range of Federal services available to Indians on Federal reservations. That Mr. Senator was a de facto recognition of the Jena Band of Choctaw. Also, it is important to mention that my members were willing to relocate. But it was the Bureau, who did not live up to their promise.

The January letter form the Bureau states, " we do not find the correspondence to which you refer (the 1938 Assistant Commissioner's letter) compelling evidence to justify circumventing the established administrative process which has been designed to resolve such acknowledgment questions," the letter, however, does not say why a written authorization from a top line officer of the Bureau is not compelling evidence nor does the letter give any indication why the Bureau and the Department have neglected this commitment to the Jena people, for 52 years.

The Bureau now says there is a lack of information since that time and the apparent need for additional information and documentation regarding the Band's social community and political processes. It is important to point out a couple of things in response to these comments. First, the Jena Band initially submitted a petition which had not been fully researched. This was brought to our attention forcefully by the Bureau's obvious deficiency reponse and two independent consultants. In doing the additional research necessary, a great deal of information has been found which the Bureau has not seen. Secondly, during that period of additional research, it came to light that the Jena Band was authorized for the full range of Federal services as an Indian tribe. This acknowledgment by the Assistant Commissioner of Indian Affairs may serve to bar the Jena Band from going through the acknowledgment process as is recommended by the Bureau. Part 83.3 (b) states that the regulations do not apply to Indian tribes, organized bands, pueblos or communities which are already acknowledged and are receiving services from the Bureau of Indian Affairs. While we are not receiving services from the Bureau, we have been acknowledged and therefore should not have to submit to this process.

One additional point must be made about the Bureau's letter and its position on acknowledgment, especially as it relates to the Jena Choctaw. As pointed out earlier, the Bureau says the Jena Band lacks documentation about its social organization and political process. These are standards in the present acknowledgement regulations 25 CFR 83. The Bureau created the regulations in 1978, as a result of a series of court actions. The regulations were conceived and published without specific Congressional authorization. These regulations were never intended to serve as a substitute for Congressional action to recognize Indian tribes or to restore recognition once it was terminated. Without legislation for a guideline, however, the regulations were very conservatively drafted to protect the administration from possible court challenges and to placate the recognized tribes which were not supportive of the process at all. In the past, the Bureau has candidly admitted that the process might not be applicable to some legitimate groups and that in fact it might be necessary for some groups to go to Congress for the decision. The Bureau in the last few years has referred at least one group to Congress for legislation.

As the years have gone by since the creation of the acknowledgement office, the Bureau has become increasingly entrenched in the position that the standards which it published in 1978 are the only basis for recognition. Further the Bureau maintains that Congress is not knowledgable enough to exercise the congressional plenary power to recognize Indian tribes without the tribes first submitting to the Bureau's process and then acting on the Bureau's recommendation. Unfortunately, for the most part Congress has acquiesced to this posturing from the Bureau and has left the fate of unrecognized tribes totally in the hands of a ponderous bureaucracy which is staffed primarily by recognized Indians who are antagonistic to unrecognized tribes and who view newly recognized and restored tribes as an additional unwanted expense.

Notwithstanding the above, we know that the Jena Band was authorized the full range of services which are provided to recognized Indian tribes in this country. The Bureau of Indian Affairs has reneged on an agreement it made with the Jena people in 1938. For the Jena Band to go the acknowledgement process will cost the Jena Band between $75,000.00 and $130,000.00, not to mention the $50,000.00 to $70,000.00 it will cost the Bureau to process the petition. We believe that this is an unconscionable waste of Federal money.

The Bureau of Indian Affairs not only does not have a standard for what constitutes previous recognition of a group, it has no standard by which a group can establish it has been recognized. To ask the Bureau to develop such standards now would not only take years, but would surely be drafted in a manner that would only serve the Bureau's interests. I feel it is significant that the BIA has declined to even review the possibility that the Jena Tribe was administratively recognized in 1938. Again, we thank you for your help and your persistent efforts to get the Bureau of Indian Affairs to keep it's promises to the Jena people. We regret this effort has taken so much of your time, but as you know this means a great deal to the Jena Band and to the surrounding area. I also realize how frustrating this must be for you, but I hope that you will continue your efforts with the resolute determination for which we have come to admire you for, and that we will be able to see the passage of a bill, which will restore the Jena Band's rights.

In behalf of the Jena people, I again thank you.

Sincerely,

Jerry Jackson

Jerry Jackson, Chairman
Jena Band of Choctaws

State of Louisiana
OFFICE OF THE GOVERNOR
Baton Rouge
70804-9004

BUDDY ROEMER
GOVERNOR

POST OFFICE BOX 94004
(504) 342-7015

November 27, 1989

The Honorable J. Bennett Johnston
United States Senate
217 Russell Senate Office Bldg.
Washington, D.C. 20510

Dear Senator Johnston,

As Governor of the State of Louisiana I would like to offer my support of the Jena Band of Choctaw's efforts to have their federal recognition reinstated. The tribe has provided all of its petition with supporting documentation for review by the Attorney General, State Police, Legislators and my staff and attorneys. In addition, there are records from the National Archives (File #38014, 1937 Choctaw), which reveal that the Jena Choctaw living in Louisiana in 1937 were offered federal trust lands located in Mississippi. These records reflect that all parties (including tribal members, BIA officials, Indian Education officials and Land Division officials) agreed to and approved the relocation of the tribe to a reservation.

Furthermore the Jena Band of Choctaw have agreed to the release of all land claims against the state up to the date of federal recognition. And finally the tribal leaders have initiated open communications with the state and agreed to enter into a three year agreement of mutual cooperation with the State of Louisiana.

Given the conditions described above, I support this tribe's efforts to seek reinstatement of their federal recognition.

Respectfully,

Buddy Roemer

BUDDY ROEMER
GOVERNOR

STATE OF LOUISIANA
OFFICE OF THE LIEUTENANT GOVERNOR

PAUL HARDY
LIEUTENANT GOVERNOR
AND
COMMISSIONER
DEPARTMENT OF CULTURE,
RECREATION AND TOURISM

P.O. BOX 44243
BATON ROUGE, LOUISIANA 70804
(504) 342-7009

January 26, 1990

Honorable Manuel Laujan, Jr.
Secretary
Department of Interior
Bureau of Indian Affairs
1951 Constitution Avenue, N.W.
Washington, D.C. 20245

Dear Mr. Laujan:

As Lieutenant Governor of the State of Louisiana I would like to offer my endorsement of the Jena Band of Choctaw's efforts to have the tribes federal recognition reinstated. I support the tribes reinstatement efforts for the following reasons:

1. The tribe has provided the state with compelling documentation that demonstrates the federal government's prior recognition of the tribe (National Archives file).
2. The tribe has agreed to provide the Attorney General's office with a letter indicating that the tribe will not file any land claims against the State of Louisiana.
3. Tribal leadership has met with the Governor's office, State Police, and the Attorney General's staff in an effort to work out cooperative agreements between the state and the tribe.
4. The tribe has provided all petition records, (including genealogies) to the state for review.

In lieu of the conditions outlined above, I feel that the Jena Band of Choctaw should be reinstated as a federally recognized tribe and I support the efforts of the Louisiana Congressional Delegation to seek this reinstatement through Congressional legislation.

With kindest regards, I am

Yours very truly,

Paul Hardy
PAUL HARDY
Lieutenant Governor

PH/kb

State of Louisiana
DEPARTMENT OF JUSTICE
LANDS AND NATURAL RESOURCES DIVISION

Post Office Box 94095
Baton Rouge, Louisiana, 70804-9095

WILLIAM J. GUSTE, JR.
ATTORNEY GENERAL

TELEPHONE (504) 342-7900

March 21, 1990

Hon. Charles "Buddy" Roemer
Governor
State of Louisiana
4th Floor, Capitol Building
Baton Rouge, LA 70802

RE: EFFORTS BY THE JENA BAND OF THE CHOCTAW INDIANS TO OBTAIN CONGRESSIONAL REINSTATEMENT

Dear Governor Roemer:

The purpose of this letter is to discuss the efforts of the Jena Band of the Choctaw Indians of Louisiana to seek restoration of federal recognition by means of congressional legislation.

As a result of a review by my office of the documents provided to the State by this Tribe of Indians, and because of the representation by the Tribe that they have no claim to any lands in this State based on the fact that they are an aboriginal Indian tribe, we know of no reason at this time why the State should oppose the Jena Band's efforts, subject to the condition mentioned below.

The primary basis for the tribe's claim of prior federal recognition is as follows: 1) the Dawes Commission (the Commission of the Five Civilized Tribes), around 1903, recognized most of the tribal members as being full-blooded Choctaw Indians and issued to them "identity cards" confirming that fact; and 2) the tribe was previously recognized in the late 1930s and early 1940s by and received federal assistance from the Office of Indian Affairs (also referred to as the Indian Service), the predecessor agency of the Bureau of Indian Affairs ("BIA"), who also offered to relocate the band to the Choctaw Indian Reservation in Mississippi.

The Jena Band has provided to my staff for review what is represented to be a copy of their complete revised petition for acknowledgement as a federally recognized Indian Tribe filed with the Bureau of Indian Affairs ("BIA"). This petition includes as part of its appendix copies of documents on file with the National Archives Office in Washington, D.C. The petition also contains documents showing the support of other federal Indian Tribes for the Band's efforts.

The review of these documents, including the tribal rolls and the genealogy and blood quantum records of the members of the Jena Band, confirm the Tribe's claims that it was previously federally recognized and had previously received federal assistance from the Indian Service. This review also indicates that the members of this Tribe have substantial Choctaw Indian Blood quantum, including some who are full-blooded and many who are half to 7/8 blooded Choctaw Indian.

Therefore, the claim by the Jena Band of the Choctaw Indians that they are in reality seeking not recognition as a new tribe, but reinstatement of their previous federal status appears based on documented fact, and not on "oral history" as are the claims of other groups claiming Indian ancestry.

As noted above, the Tribal Chairman of the Jena Band of the Choctaw Indians has confirmed orally to a member of my staff that his Tribe has no aboriginal Indian land claim to land in Louisiana. It is therefore suggested that any federal legislation involving this Tribe of Indians properly confirm the fact that the Jena Band has no aboriginal Indian land claim to land in Louisiana. If this is done, then my office knows of no reason, at this time, why the State of Louisiana should oppose this Tribe's efforts to receive reinstatement of the status of a federally recognized Indian Tribe by means of congressional legislation.

Sincerely yours,

William J Guste

WILLIAM J. GUSTE, JR.
ATTORNEY GENERAL

WJG, JR./sdb

W. FOX MCKEITHEN
SECRETARY OF STATE
STATE OF LOUISIANA

P. O. BOX 94125
BATON ROUGE, LOUISIANA 70804-9125
504/922-1000

March 23, 1990

Honorable J. Bennett Johnston, Jr.
U.S. Senator
Senate Office Building
Washington, D.C. 20510

Dear Senator Johnston,

As Secretary of State of Louisiana, I whole-heartily support the Jena Band of the Choctaw Tribe's efforts to restore Federal recognition which I understand would take place with the passage of Senate Bill 1918.

It is my understanding that this tribe has well documented their case, and has worked closely with appropriate state authorities on proper cooperative agreements.

Please contact me personally if their is anything you may suggest my office should undertake to further assist the Jena Band of the Choctaw Tribe in achieving their worthy goal.

Sincerely,

Fox McKeithen

W. Fox McKeithen
Secretary of State

WFM/sws

cc: Honorable John B. Breaux
Honorable Bob Livingston
Honorable Lindy Boggs
Honorable Wilbert J. "Billy" Tauzin
Honorable Jim McCrery
Honorable Jerry Huckaby

LaSalle Parish Police Jury

PHONE (318) 992-2101
P.O. BOX 57
JENA, LOUISIANA 71342

OFFICERS
Lyndall Kitterlin
President

Roy G. "Doc" Eubanks
Vice-President

Patsye Paul
Secretary-Treasurer

Louise Curtis
Asst. Secretary-Treasurer

MEMBERS
Euel E. Douglas
Ward One

Clifton Barton
Ward Two

Donald L. Arnold
Ward Three

Roy G. "Doc" Eubanks
Ward Four

Virgil W. Terral
Ward Five

Earl D. Killingsworth
Ward Six

Wayne Chapman
Ward Seven

David Ivey
Ward Eight

Lyndall Kitterlin
Ward Nine

Ben Reid Jr
Ward Ten

December 15, 1989

The Honorable J. Bennett Johnston
United State Senate
217 Russell Senate Office Bldg.
Washington, D. C. 20510

Dear Senator Johnston:

The LaSalle Parish Police Jury would like to offer their support of the Jena Band of Choctaw's efforts to have their federal recognition reinstated. The tribe has provided all of its petition with supporting documentation for review to the jury.

The Jury feels if the tribe is reinstated it will mean millions of dollars of federal funds that can be used to create jobs in this area and also mean additional services to the tribe for economic development.

This is not only important to the Indians, but to every citizen of the parish.

Therefore, the jury supports this tribe's effort to seek reinstatement of their federal recognition.

Sincerely,

Wayne Chapman, President
LaSalle Parish Police Jury

MISSISSIPPI BAND OF CHOCTAW INDIANS

TRIBAL OFFICE BUILDING
P.O. BOX 6010
PHILADELPHIA, MISSISSIPPI 39350
TELEPHONE (601) 656-5251

March 5, 1990

Mr. Jerry Jackson, Chairman
Jena Band of Choctaws
Post Office Box 14
Jean LA 71342

Dear Mr. Jackson:

Enclosed please find one original of Tribal Council Resolution CHO 66-90, endorsing the Jena Choctaws' efforts toward reinstatement of federally-recognized status. The resolution appears rather lengthy; but we wanted to spell out in some detail for the uninformed the strong ties between you all and the people here, and explain a little of the history of the Jena Choctaws.

Please let me know of anything further that we need to do from here to assist you and the Jena Choctaws in receiving federal services.

Sincerely,

Phillip Martin
Chief

PM:ab

MISSISSIPPI BAND OF CHOCTAW INDIANS

RESOLUTION CHO 66-90

A RESOLUTION TO SUPPORT THE MEMBERS OF THE JENA BAND OF CHOCTAWS IN THEIR EFFORT TO BE REINSTATED AS A FEDERALLY-RECOGNIZED TRIBE

WHEREAS, the Tribal Council of the Mississippi Band of Choctaw Indians has had contacts with the members of the Jena Band of Choctaws, Jena, Louisiana, for several years, and has no doubts that the members of said Band are descendents of members of the Mississippi Band of Choctaw Indians, possessing Choctaw surnames and speaking the Choctaw language in the dialect of the Bogue Chitto community in Neshoba and Kemper counties, Mississippi, and

WHEREAS, the Jena Band of Choctaws is seeking a reinstatement of federal recognition based on the fact that Jena Choctaws received federal educational services through the Choctaw Agency, Bureau of Indian Affairs, Philadelphia, Mississippi, and under Congressional appropriation in the years 1936 and 1937, based upon records obtained from the Choctaw Agency; a position identical to that of a tribe which obtained federal recognition on that basis in 1974, the Coushatta Tribe of Louisiana, which, along with the Chitimacha Tribe of Louisiana and the Jena Choctaws, was the recipient of such educational appropriations in the 1930's, and

WHEREAS, among the evidence compiled by the Jena Choctaws are Dawes Commission documents from 1902 establishing persons in LaSalle Parish, Louisiana, as Mississippi Choctaws (provided that they remove to the Indian Territory in that same year), including one Willis Jackson (Ah-la-pin-tubbee) who testified that he had been born in Scott County, Mississippi, and had moved to Louisiana with his father, William Johnson (E-la-palo-ubbee) from Scott County, and

WHEREAS, in 1938, Choctaw Agency Superintendent A.C. Hector suggested that the Jena Choctaws be removed to the Pearl River reservation in Neshoba County, Mississippi, but, though some families indicated agreement, none made the move, now therefore be it

RESOLVED, that the Tribal Council of the Mississippi Band of Choctaw Indians does hereby express its support for the reinstatement of federal recognition for the Jena Band of Choctaws, and be it further

RESOLVED, that the Tribal Council does hereby authorize the Chief to take such other and further actions as may be appropriate to assist the Jena Choctaws in their efforts to obtain recognition.

CERTIFICATION

I, the undersigned, as Secretary-Treasurer of the Mississippi Band of Choctaw Indians, certify that the Tribal Council of said Band is composed of 16 members, of whom 16, constituting a quorum, were present at a special meeting thereof, duly called, noticed, convened, and held this 20th day of February, 1990; and that the foregoing Resolution was duly adopted by a vote of 16 members in favor, 0 opposed, and 0 abstaining.

Dated this 20th day of February, 1990.

ATTEST:

Phillip Martin
Chief

Frank Steve
Secretary-Treasurer

CHITIMACHA TRIBE OF LOUISIANA

January 26, 1990

Jerry D. Jackson, Tribal Chairman
Jena Band of Choctaws
P.O. Box 14
Jena, LA 71342

Dear Mr. Jackson:

As the Tribal Chairman of the Chitimacha Tribe of Louisiana, I wish to inform you that the Chitimacha Tribe fully supports the Jena Band of Choctaws endeavor of being reinstated as a federally recognized Indian tribe.

We have carefully reviewed the documentation in your reinstatment appeal. Resultantly, we have passed a Tribal Council resolution (attached) in support of reinstatement as a federally recognized tribe.

We encourage you to pursue your efforts for federal recognition because we sincerely believe that your particular case for reinstatement, undeniably proves your past status as a federally recognized autonomous Indian entity.

If we can be of any further assistance in your quest for reinstatement, feel free to call me at any time.

Sincerely,

Ralph Darden, Tribal Chairman
Chitimacha Tribe of Louisiana

attachment

TRIBAL CENTER
P. O. BOX 661
CHARENTON, LA. 70523
318-923-4973

CHITIMACHA TRIBE OF LOUISIANA

TRIBAL CENTER
P. O. BOX 661
CHARENTON, LA. 70523
318-923-4973

**CHITIMACHA TRIBAL COUNCIL
RESOLUTION** CHI-TC#2-90

WHEREAS, the Chitimacha Tribe of Louisiana is a Native American Indian Tribe organized under the Indian Reorganization Act of 1934, and

WHEREAS, the Chitimacha Tribe is a sovereign Indian Nation and recognized as such by the United States of America, and

WHEREAS, the Chitimacha Tribal Council is the duly elected governing body of the Chitimacha Tribe, as authorized by Article V, Section I of the Constitution and Bylaws adopted by the people of the Chitimacha Tribe and approved by the Secretary of the Interior, and

WHEREAS, the Jena Band of Choctaws are petitioning for reinstatement as a federally recognized Band, and

WHEREAS, the Chitimacha Tribe of Louisiana has reviewed the supporting documentation for reinstatement, and

WHEREAS, the documentation provided in the petition clearly acknowledges that the Jena Band of Choctaws were recognized by the Bureau of Indian Affairs by being provided federal services, and

WHEREAS, the Jena Band of Choctaws clearly show documented evidence that they adequately fulfill sufficient requirements to be recognized as an autonomous band of Indians.

NOW THEREFORE BE IT RESOLVED, that the Chitimacha Tribe of Louisiana supports the reinstatement of the Jena Band of Choctaw as a federally recognized Indian Band.

CERTIFICATION

I, the undersigned as Secretary-Treasurer of the Chitimacha Tribal Council, certify that the Tribal Council is composed of 5 members of whom 5 were present at a meeting called, convened and held this 25th day of January, 1990, and that the foregoing resolution was duly adopted at such meeting by the affirmative vote of 4 members for, 0 members against, 0 members abstaining; pursuant to the authority contained under Article VII, Section I of our Tribal Constitution and Bylaws approved January 14, 1971.

ATTEST:

Peggy Gaddy
Peggy Gaddy,
Secretary-Treasurer

APPROVED:

Ralph Darden
Ralph Darden,
Chairman

Tunica - Biloxi Indians of Louisiana
P.O. BOX 331
MARKSVILLE, LOUISIANA 71351
(318) 253-9767

January 09, 1990

Mr. Jerry Jackson, Chairman
Jena Band of Choctaws
P.O. Box 14
Jena, LA 71342

Dear Mr. Jackson:

Enclosed please find our Tribal Resolution #03-90, which was unanimously adopted by the Tribal Council at our January 7th Council Meeting.

As stated, our Tribe fully supports your request for reinstatement as a federally-recognized Indian tribe, and we pledge our assistance in your endeavor. Please do not hesitate to contact me at the above telephone number or address should further need arise.

We wish you success.

Sincerely,

Earl J. Barbry Sr.

Earl J. Barbry, Sr.
Chairman

Enclosure

TUNICA-BILOXI INDIANS OF LOUISIANA
RESOLUTION #03-90

A RESOLUTION TO SUPPORT THE JENA BAND OF CHOCTAW INDIANS IN ITS CASE TO BE REINSTATED AS A FEDERALLY-RECOGNIZED INDIAN TRIBE

WHEREAS, the Tunica-Biloxi Indians of Louisiana, as a federally recognized Indian Tribe, realizes the benefits of such recognition to its sovereignty and self-determination; and

WHEREAS, the Tribal Council strongly supports the assertion of similar goals and purposes among all Indian people; and

WHEREAS, the Tunica-Biloxi Tribe has enjoyed a long-standing relationship with the Jena Band of Choctaw Indians and at one time were both under the leadership of the Tunica chief (see reports by Brandon and Hector, file 33956-38), and

WHEREAS, the Tribal Council firmly believes that the documentation supporting the Jena Band of Choctaws case merits their reinstatement, now therefore be it

RESOLVED, that the Tribal Council does hereby support the reinstatement of the Jena Band of Choctaws as a federally-recognized Indian tribe.

CERTIFICATION

I, the undersigned, as Secretary-Treasurer of the Tunica-Biloxi Indians of Louisiana, certify that the Tribal Council of said tribe is composed of 7 members, of whom 7, constituting a quorum, were present at a Council meeting thereof, duly called, noticed, convened and held this 7th day of January, 1990; and that the foregoing Resolution was duly adopted by a vote of 7 members in favor, 0 opposed, and 0 abstaining.

Dated this 7th day of January, 1990.

ATTEST:

Earl J. Barbry Sr.
Chairman

Cemonia Williams
Secretary-Treasurer

ZUNI TRIBAL COUNCIL
Zuni, New Mexico

February 26, 1990

RESOLUTION NO. M70-90-L046

WHEREAS, the Zuni Tribal Council, consisting of the Governor, Lieutenant Governor, and six (6) Tenientes, is declared to be the legislative authority of the Pueblo of Zuni by Article V, Section 1, of the Constitution of the Zuni Tribe; and,

WHEREAS, S.1918 is a bill currently under consideration by the Senate of the United States which provides for federal recognition of the Jena Bank of Choctaws; and,

WHEREAS, the Zuni Tribal Council feels the Jena Band of Choctaws have a meritorious case for reinstatement of their federal recognition as Indians;

NOW, THEREFORE BE IT RESOLVED, that the Senate and House of Representatives of the United States of America in Congress assembled are hereby urged to enact S.1918 into law.

ZUNI TRIBAL COUNCIL:

Pesancio Lasiloo
Pesancio Lasiloo, Lt. Governor

Barton Martza, Hd. Councilman

Edward Beyuka
Edward Beyuka, Councilman

Virgil Wyaco Sr.
Virgil Wyaco, Sr., Councilman

Angus Mahooty
Angus Mahooty, Councilman

Rita E. Lorenzo
Rita E. Lorenzo, Councilwoman

William Tsikewa, Sr., Councilman

RESOLUTION NO. M70-90-L046
Page 2

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Zuni Tribal Council at a duly called meeting at Zuni, New Mexico, at which a quorum was present and that the same was approved by a vote of 8 in favor and 0 approved on February 26, 1990.

Robert E Lewis
Robert E. Lewis, Governor
Pueblo of Zuni

[✓ APPROVED]/D~~ISAPPROVED~~ BY:

Robert E Lewis 2-26-90
Robert E. Lewis, Governor Date

TESTIMONY OF JACQUELINE A. MATTE, HISTORIAN [1]

Overview of the History of the MOWA Choctaws

The Choctaws of Mobile and Washington counties, Alabama, hereinafter referred to as the MOWA's, a name selected to represent their modern day geographic location, are descendants of native Americans who occupied this same territory prior to European discovery and have continuously resided in north Mobile and south Washington counties since that time. The present geographical area occupied by the MOWA Choctaws is a region that has historically, dating back beyond first European contact, and consistently since that time, been occupied by Indians. The MOWA tribe, in particular, is the direct successor of the Six Towns of Choctaws led by Piamingo Hometak which inhabited this general area at the time of first European contact and continued to do so through Removal in the early 19th century. Historical references to the six towns Choctaws can be found in the records of the earliest European explorers to this area dating back to the 1700's.

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[1] Mrs. Matte holds a master's degree in history, as well as a master's degree in education. She is the author of the History of Washington County: First County in Alabama, which includes a chapter about the MOWA Band of Choctaw Indians. She has served as historical researcher for the BIA petition for tribal recognition of the MOWA Band of Choctaws. She is a teacher of history at Mountain Brook Junior High School in Birmingham, Alabama.

Conditions in MOWA territory were turbulent during the late 1700's and early 1800's as a consequence of wars between the different Indian tribes that lived in the area occupied by the MOWA Choctaw ancestors, as well as wars, into which the Indians were drawn, between the various countries claiming and attempting to settle this area. The turmoil in the lives of MOWA Choctaw ancestors in this era was also a result of the United States' attempt to remove all Indians from this territory and was contributed to by natural difficulties including yellow fever. This turbulence caused disorganization and dislocation among the Sixtown Choctaws. Despite this upheaval, however, and in spite of repeated efforts in the early 1800's to remove all Choctaws from south Alabama, a band of Choctaws refused to be driven from their native homeland. These Choctaws were granted the right to remain by provisions of each treaty they negotiated with the United States, which treaties also reserved and guaranteed their rights and Choctaw tribal status if they remained. The last of these treaties was signed in 1830 and is known as the Treaty of Dancing Rabbit Creek. As an example of the rights reserved by the Choctaws in their agreements with the United States, Article XIV of that treaty provides: "Each Choctaw head of a family being desirous to remain . . . shall be permitted to do so . . Persons who claim under this article shall not lose the privilege of a Choctaw citizen."

In the early 1800's, as this turbulence and upheaval subsided, the Choctaws who refused to remove west reorganized and formed the southeast Alabama settlements of Kunsly and Kun-shak. Kunsly was part of a general catchment area in the "forks" of the Tombigbee and Alabama rivers where Indians and mixed bloods from several tribes had resided since the late 1700's. The specific derivation of the names of these settlements is no longer known. "Kunsha", however, is a Choctaw word which translates as "reed break." Reed is the name of one of the leading ancestral clans in the MOWA Choctaw community. The primary settlers of the Kun-shak community were members of a family known by the surname "Reed." The settlement of Kunsly was led by Hoshi-Homa, known as Captain Red Bird. Hoshi-Homa's fame and popularity led to his becoming a folk hero and the name "Captain Red Bird" was given to later tribal leaders including Peter Cole and Lemuel Byrd. The composition of the contemporary MOWA Choctaw community reflects direct descendancy from these south Alabama Choctaw ancestors. More than half of the present tribal members are accounted for in only four surnames: Reed, Weaver, Rivers and Byrd. Thus, the names of the historical Choctaw families and clans of south Alabama correlate directly to modern-day tribal families.

Genealogical research conducted in connection with the MOWA petition for tribal recognition positively establishes the continuity of the south Alabama Choctaw tribe that is today the MOWA's from the period of first European contact through the present day. In addition, research of records and publications establishes that this tribe has been continuously recognized in its community, by the state of Alabama, and even by the federal government, from historical times to the present. Oral histories taken from the elders of the MOWA establish its operation as a continuous self-governing entity.

From the earliest times up to the present, the territorial and economic organization of the MOWA tribe has rested on a dense network of kinship ties. Nearly ten generations ago, the MOWA progenitors and their immediate descendants established the basis for an enduring kin-based community organization -- a structure of relationships yielding a quality and density of social ties that are generically "tribal" in character. The MOWA's have consistently maintained continuity in their tribal relations.

There has also been continuity of leadership throughout MOWA history, stretching back through the 19th and into the 18th centuries. The leaders of the present descend directly from the leaders of the past. The MOWA tribal leaders settle disputes, allot punishment, and give advice when asked. Outsiders (e.g. timber contractors) know and seek out the recognized tribal leaders for making business arrangements relating to the MOWA's. Taxes have been levied by MOWA leaders on tribal members to support MOWA community schools.

MOWA social patterns are characteristically Indian. Despite tribal pressures and the racial turbulence in the 19th century, the MOWA's have consistently maintained that they are Indians. Clearly, the MOWA's constitute a distinct "community" within the region of southwest Alabama.

The present day MOWA community has its own churches as well as its own schools. The churches date back to the time of the establishment of the Kunsly and Kun-shak communities, specifically to the "mother" churches of those communities Reed Chapel and Aldersgate (formerly Byrd Chapel). The MOWA's have never relinquished control of their churches and, indeed, during the 1930's established the "Indian Association of Churches." The earliest MOWA school (the Byrd school) dates from the 1850's. Prior to desegregation, there were seven schools (three in Mobile and four in Washington county) exclusively serving the MOWA settlements. The schools located in the two larger settlement areas (Reed Chapel and The Level) are still in operation. Their continuation was a compromise exception to a desegregation order related to southeast Alabama which closed the other MOWA schools in the early 1970's. After negotiations between tribal leaders and county school officials following this desegregation order, these two schools were permitted to remain in operation. This concession was granted explicitly based on the recognition that those schools served an Indian community. The students, teachers and administrators in these two schools are nearly all tribal members, and there is much parental involvement.

Despite very substantial changes in the economy and political system of the surrounding area over this long period of time, the development within the MOWA communities has followed a highly consistent pattern. Land losses and adverse legal conditions had strong negative impacts on the economic well-being of the MOWA's, but did not precipitate the dissolution of their community structure. Presently, there are twenty-four named MOWA settlements within the MOWA community and twenty-one MOWA churches located within those settlements. Contemporary settlements cluster around the two core areas, forming almost continuous occupation along the roads and area west of Highway 43, from just south of Mt. Vernon, Alabama to about three miles north of McIntosh, Alabama. The area encompassed is approximately fifteen miles long and ten miles deep. A distance of less than a mile separates the northernmost settlement in Mobile County from the southernmost settlement in Washington County.

The size and distribution of contemporary settlements strongly reflects historical patterns. Heavy concentrations of MOWA families surround the two original nuclei; 38% of present members live within two miles of Reed Chapel and another 22% are within two miles of Byrd Chapel.

Among the recent tribal actions of the MOWA's was the purchase in 1983 of 160 acres of land within the settlement known as the Level. This parcel has strong historic significance and is strategically located on the boundary line between Washington and Mobile counties. Tribal economic development projects, including raising cattle and catfish, are presently underway on this acreage; another portion has been developed as a permanent pow wow grounds. The MOWA Choctaws also use their tribal property to continue and preserve their tribal customs and ceremonies. Practices in these ceremonies, as well as customs and practices used in the agricultural projects conducted on the MOWA Choctaw land, reflect a distinct Choctaw heritage.

Proof of the MOWA's Satisfaction of the Seven Criteria for Tribal Recognition

Attached to this testimony is a chronology I have prepared based on my research listing documentary evidence in chronological order which establishes the continuous existence of the MOWA Choctaw tribe and the continuous recognition of that tribe by the federal, as well as state and local governments, and by historians and non-Indian inhabitants of the south Alabama area of their homeland. What follows is an organization of that attached chronology according to the seven criteria for tribal recognition as published at 25 CFR, Chapter 1, Section 83.7.

Criteria 1: Repeated Identification by Federal Authorities

Documentary evidence of recognition of the MOWA Choctaws by federal authorities developed by our research, chronology listed, includes:

1786	In this year, a treaty was signed with the Choctaws of south Alabama reestablishing the boundaries of British Session and providing for trading posts. Ancestors of the MOWA Choctaws signed this treaty.
1801	Another treaty with the south Alabama Choctaws was signed this year to establish a wagon trail through Indian lands. The MOWA ancestral leader, Hoshi Homa, also known as Captain Red Bird, signed this treaty.
1802	A treaty was signed with the Choctaws in this year releasing to the United States Choctaw lands including the ancestral lands of the MOWA Choctaws. This treaty was signed "in behalf of the Six Towns" including Yowani and was witnessed by Turner Brashears, who was a white countryman having a Choctaw family which is an ancestor of the modern day MOWA Tribe.
1803	A treaty with the Choctaws made this year was signed by "Chiefs residing on the Tombigbee (river) near to St. Stephens" including Pio Mingo (Home Tac), an ancestral leader of the MOWA Choctaws. This treaty was also witnessed by Young Gaines, a white countryman having a Choctaw family which is part of the ancestry of the modern day MOWA Choctaws.
1805	Captain Red Bird, an ancestral leader of the MOWA Choctaws, was one of the signors of a Choctaw treaty with the United States in this year. In addition, this treaty was witnessed by William Colbert and Charles Juzan who had Choctaw families who are ancestors of the modern day MOWA Choctaw tribal members.
1814-1815	Roles of Captain Pushmattahaw's company of Choctaw warriors who fought in the war of 1812 in the

	service of the United States reflect ancestors of the MOWA Choctaws including Pia Mingo, William Andrews (Andre), Charles Juzan, Iltanabbe, Elitubbee and Iou-a-cha.
1816	The treaty between the United States and the Choctaw nation of Mississippi and southeast Alabama was signed this year. Mowa ancestral leaders Bob Cole, Hoopoieemiko and Turner Brashears signed this treaty.
1820	The Doak's Stand treaty between the United States and the Choctaws signed this year reflects the names of MOWA ancestors Bob Cole, John Frazier and Captain Red Bird.
1825	MOWA ancestors Robert Cole and Nittuckachee signed a treaty on behalf of the Choctaws with the United States in this year.
1830	The Treaty of Dancing River Creek ceding the remaining lands of the south Alabama and Mississippi Choctaws, including the remaining ancestral lands of the MOWA Choctaws, was signed in this year. MOWA Choctaw ancestors who were signors and witnesses of this treaty included Robert Cole, Pierre Juzan, Hoshi Homa (Red Bird), Zadoc Brashears and Hopiahoomah. MOWA ancestors specifically provided for in this treaty included Charles Juzan, James Campbell. Turner Brashears, Oklahoma, William Juzan, Alexander McKee and Delilah Juzan.
1831-1834	Correspondence relating to the emigration of Choctaw Indians and those still living in the southeast Alabama area is included in document 512 of the 23rd Congress and list names of MOWA ancestors.
1836	Document 1523, 24:1 of the American State Papers Public Lands reflects claims to reservations of land under the 14th Article of the Treaty of Dancing Rabbit Creek.
1844	Letters written by George S. Gaines, Commissioner to T. Hartley Crawford, Commissioner of Indian Affairs, in this year, report the number of Choctaws remaining in the southeast, including in south Alabama.
1852	Documents contained in the Office of Indian Affairs, NARC Microfilm 234, Role 172, Choctaw

	Agency West, contains a letter written to the Honorable Millard Filmore, President of the United States, from four Choctaws, including MOWA Tribal ancestor leader Eli-Tubbee (Chief Tom Gibson), on behalf of over 400 Choctaws residing in southern Alabama and near Mobile who "do not wish to emigrate but to remain where we are and become citizens."
1853	Letters in the files of the Office of Indian Affairs, NARC Microfilm 234, Role 172, Choctaw Agency West, include correspondence from a Dr. McVoy of Mobile to Honorable A. H. H. Stewart, Secretary of the Interior, regearing "over 400 Choctaws living in the neighborhood . . . [who] are altogether unwilling to remove west and wish to become citizens of this region."
1856	A census of eastern Choctaws for this year as prepared by Douglas H. Cooper, U. S. Indian Agent, contains MOWA ancestors including Eli-Tubbee (Chief Tom Gibson).
1881	U. S. Court of Claims files, NARC, RG 123, reflect the case of the Choctaw Nation of Indians v. the United States, case number 12742. Included in the files of this case are the depositions of MOWA ancestors to confirm MOWA oral history. The witnesses deposed include James Campbell, Alexander Brashears, Charles Frazier, Robert Cole, Peter Cole, Eli-Tubbee (Tom Gibson) and Pierre Juzan.
1890	The U. S. Census of 1890 records 402 Choctaw Indians living in Mobile county.
1900-1920	Hearings before the Sub-Committee of the Committee on Indian Affairs, House of Representatives, on the subject of the enrollment of the Five Civilized Tribes for this year, list the names and testimony of MOWA ancestors.
1910	The U. S. Census of this year identified 172 Indians in Washington county and 7 in Mobile county.
1920	The U. S. Census of this year identified 10 Indians in Washington county, and 12 in Mobile county.
1930	The U. S. Census of this year identified 0 Indians in Washington county, and 50 in Mobile county.

These documents, which will be submitted at the hearing before this Sub-Committee, reflect the continuing MOWA tribal existence and presence in the same south Alabama area where the modern day MOWA tribe resides today. While the accuracy of some of these records may be questioned, particularly the accuracy of the count of Indians as contained in the U. S. Census reports, these documents nonetheless clearly establish that the MOWA Choctaws have continuously resided in south Alabama from the time of European contact to the present period.

Criteria 2-4: Longstanding Relationship with State Governments and Local Governments Based on Recognition of Indian Identity, and Identification as an Indian Identity by Records in Court Houses, Churches or Schools

Combining the second through fourth criteria of 25 CFR Chapter 1, Section 83.7, the MOWA Choctaws have also had a longstanding relationship with the State of Alabama, the local governments of Mobile and Washington counties, and these contacts and relationships are reflected in the records of the courts, churches and schools of the state and these counties:

1729-1740	Records of the Mississippi Provincial Archives (the Mississippi territory included what is now south Alabama) describes Choctaw villages. Included among these villages is Yowani, which was located in modern day south Alabama and from which the modern day MOWA's derived.

1764	Rowen's map of 1764 as found in the Alabama Department of Archives and History identifies the Yowani Trading Path to Mobile which was located about one mile west of Citronelle, Alabama, where it united with the Big Trading Path near the 31st parallel in Washington county, Alabama.
1772	Bernard Romans' map of 1772 is included in the records of the Alabama Department of Archives and History. Choctaw towns and settlements, as well as the occupants of some Choctaw villages, including the names of ancestors of the MOWA Choctaws are identified in this map.
1780	Washington County Deed Book "A", pages 66-67, reflect land deeded on the Tombigbee River by MOWA ancestral leader Piamingo Hometac.
1800	Byrd Church, one of the two original MOWA Choctaw churches, was organized by the Bob Cole family and the Brashears family in this year. The Methodists renamed Byrd Church Aldersgate in the 1930's.
1813-1907	Deed records contained in the Mobile County Probate Office and Circuit Court records reflect the names and transactions and dealings of MOWA Choctaw ancestors.
1818-1830	H. S. Halbert papers as contained in the Alabama Department of Archives and History list schools and scholars attending Choctaw schools sponsored by the United States government.
1836-1977	Land records of Mobile and Washington county during this entire period of time reflect MOWA ancestors as well as their present day descendants.
1837	Choctaw Muster Roles as contained in the Alabama Department of Archives and History list MOWA ancestors Chief Robert M. Jones, Pierre Juzan, William Colbert, James Gibson and John Juzert.
1839	The Minute Book from Washington County Orphan's Court contains the petition for dower righ[illegible] by Phoebe Juzan, widow of Charles Juzan. In addition, Deed Book 1 of Washington County, Alabama, page 168, contains Pierre Juzan's deed subject to the relinquishment of dower rights by his wife, Eliza.

1846	In this year, the Alabama Supreme Court decided the case of Brashears v. Williams, 10 Ala. 630 (1846) which declares: "the Act of 1832 extending the jurisdiction of this state over the Indian territory does not . . . take from a reservee, his citizenship as a Choctaw -- the treaty securing the right of resuming his status in the tribe at pleasure and the right to live under his own laws and customs."
1850	Reed Chapel Church, the second church of the MOWA Choctaw Tribe, was constructed in this year.
1854-1943	Records in Washington County Probate Office reflect ancestors and present day MOWA Choctaw tribal members.
1854-1950	Mobile County school records reflect that before the Civil War, ancestors of the MOWA Choctaws were trustees in local schools and that after the Civil War, their schools were classified as "non-white."
1862	As reflected in the records of the Alabama Department of Archives and History, S. G. Spann, was made commander of Choctaw forces for Mobile Alabama and was authorized by the Secretary of War to enlist all the Indians into the service of the Confederate states as scouts.
1863	A Muster Role of Captain Toomar's company for this year list the members of an ethnic regiment of Choctaws and mixed-blood Indians and includes the names of ancestors of the present day MOWA Choctaw tribe.
1882	Records of the Alabama Department of Archives and History reflect that the Choctaw Baptist Mission in Alabama was begun in 1882.
1917-1965	Records of the Washington County School and Minutes of the Washington County Board of Education reflects MOWA Choctaw ancestors.
1924	In this year, a survey was made for Governor William W. Brandon, governor of the state of Alabama, of the "so-called Cajun Settlements in Southern part of Washington county, Alabama: (Indians)".
1979	In this year, to the Alabama House and Senate recognized the sovereign rights of the Choctaws of

	Mobile and Washington county, Alabama and created the Mobile-Washington Counties Indian Commission.
1980	Alabama Attorney General Charles Graddick rendered his opinion in this year which confirmed the Choctaws of Mobile and Washington counties as being entitled to their rights as a sovereign tribe.

Criteria 5-6: Identification as an Indian Entity by Anthropologists, Historians or Scholars and Repeated Identification as an Indian Entity in Newspapers and Books

Combining criteria 5 and 6 of 25 CFR Chapter 1, Section 83.7, MOWA Choctaws have been repeatedly recognized as an Indian tribe by historians and scholars, and in writings of their non-Indian contemporaries:

1700	"The Indians of the Southeastern United States" published by the Smithsonian Institution, Bureau of American Ethnology, Bulletin 137, describes small Indian tribes living on the Tombigbee and Mobile Rivers which were encountered by first European explorers in approximately 1700.
1702	In the Smithsonian Institution's Bureau of American Ethnology, Bulletin 103, an article titled "Source Material for the Social and Ceremonial Life of the Choctaw Indians" describes the political structure and social organization of Choctaws, including the Sixtown Choctaws and the southern most Yowani Village of the Sixtown Choctaws, as it existed in approximately 1702.
1755	An article titled "An Early Account of the Choctaw Indians" as contained in the American Anthropological Association, Vol. V, No. 2, April-June, 1918, describes Choctaw customs and political divisions and discusses the Yowani Village which is stated as having 30 men in approximately 1755.

1811	The Washington County News edition of November 1, 1962, reported that the first settlers of Millry, Alabama in 1811 were members of the Choctaw Band of Chief Tom Gibson. Chief Tom Gibson (or Eli-Tubbee) was chief of a Six Town's Village and an ancestor of petitioners.
1831	An article by H. S. Halbert titled "The Last Indian Counsel on Noxubee Rivers" as published by The Mississippi Historical Society Publications, Volume IV, 1901, pages 271-280, describes the feelings of the Choctaws who opposed moving West, specifically the "Six Towns who are opposed to the treaty and declared that they would not go West." MOWA ancestral chief Eli-Tubbee (Tom Gibson) was stated as being present at this council.
1833-1882	Various writings of southern journalist in this period verify the existence of the ancestral tribe of the modern day MOWA Choctaw Tribe. Included among these writings: James Stuart, Three Years in North America, Vol. II, New York: J & J Harper, 1833, pgs. 122-123; Frederick Bremer, The Homes of the New World: Impressions of America (1847-1851), New York, 1853, Vol. XI. Charles Lanman, Adventures in the Wilds: the U. S. and British America, Vol. II, 1856, pg. 190197 ("the number of Indians who spend much of their time in Mobile, but who live in the neighboring pine woods, is estimated at 1,000."); Harriet E. Amos, Cotton City: Urban Development and Antebellum Mobile. University of Alabama Press, 1985; Prieur Jay Higginbotham, The Mobile Indians, Mobile, Alabama 1966, pg. 80 (". . . just before and after the Civil War there was a small Indian settlement on Springhill Avenue just east of the present Springhill College."); Frances Beverly, "The Red Man in Mobile History," Federal Writers Project, 1930's.
1889-1897	H. Austill's article: "White Man's Friend: Choctaw Chief Pushmataha, a Native Great Man" appeared in the Daily Register, Mobile, Alabama, on August 21, 1897, reported that Choctaws were frequently seen on the streets of Mobile. In addition, the Sunday, May 15, 1927, issue of the Birmingham News contained an article by James M. Glenn, Phd. entitled "Indians Still Make Homes in South Alabama Counties: Familiar Figures in Small Towns." In that article, Dr. Glenn states: "The

writer has seem members of the Choctaw tribes in upper Mobile county."

1941 In a publication entitled Alabama: A Guide to the Deep South, edited by Alyce Billings Walker reprinted New York, Hastings House, 1975, the Alabama "cajun" Indians are described and the "cajun" designation is refuted.

1948 In "Surviving Indian Groups of the Eastern United States" by William Harlan Gilbert, Jr., which was published as part of the Annual Report of the Board of Regents of the Smithsonian Institution for 1948, the MOWA Choctaw Tribe is recognized.

Criteria 7: Repeated Identification and Dealings as an Indian Entity with Recognized Indian Tribes Or National Indian Organizations

As indicated in his statement filed in support of Senator Shelby's legislation, Gallasneed Weaver of the MOWA Choctaw Tribe represents the tribe on the Alabama Indian Affairs Commission. Indeed, he has served three terms as chairman of that commission. Mr. Weaver was chosen by Alabama's Governor George Wallace, and later by Governor Guy Hunt, to represent the Indians to the Interstate Indian Conference for two different terms. Mr. Weaver has also represented the MOWA Choctaws to both the National Conference of American Indians and the National Indian Education Conferences for the last several years. He has been granted a lifetime membership in the National Indian Education Conference.

Conclusion

I respectfully submit that the research which I and others have performed related to the MOWA Choctaw Tribe clearly and unequivocally supports the legislation which is before you requesting federal recognition of the tribal status of these Indians. This conclusion is not mine only. Bud Shepherd, who wrote the BIA Regulations by which tribal status is to be determined, expressed his opinion that the MOWA Choctaws satisfy any reasonable criteria for federal tribal recognition. The State of Alabama, of course, agrees that the MOWA Choctaws are a legitimate Indian tribe. The effort and struggle of the MOWA Choctaw people to provide you with the information presented today has been monumental in terms of their resources and abilities. Their effort will be worthwhile, however, if it is reviewed by this committee and entertained with the respect and compassion owed native Americans by the United States government. I respectfully submit that such review will leave you no doubt that the MOWA Choctaws are and have continuously been a legitimate Indian tribe since historical times and should be so recognized by the United States Congress.

DOCUMENTATION OF CONTINUOUS GOVERNMENT, RELIGIOUS, AND EDUCATIONAL INTERACTION BY CHOCTAWS OF MOBILE & WASHINGTON COUNTIES, ALABAMA

1700 John R. Swanton, "The Indians of the Southeastern United States," Smithsonian Institution, Bureau of American Ethnology, Bulletin 137. Washington: Government Printing Office, 1946. Small Indian tribes described living on Tombigbee and Mobile Rivers encountered by first European explorers.

1702 John R. Swanton, "Source material for the Social and Ceremonial Life of the Choctaw Indians," Smithsonian Institution, Bureau of American Ethnology, Bulletin 103. Washington: Government Printing Office, 1931. Described political structure and social organization of Choctaws, including the Sixtowns Choctaws, the Southeastern division with the Yowani occupying the southermost village. Eight authorities for the names of Choctaw towns are cited.

1729-1740 Dunbar Rowland, ed., Mississippi Provincial Archives: French Dominion. Vol. I. Jackson, MS: Press of the Mississippi Department of Archives and History, 1927. Describes villages, gives name of chiefs and number of warriors occupying each. Yowani - 60 warriors. A post was established in 1729 by Bienville's brother. (p. 44 and 143)

1732 H. S. Halbert, "Danville's Map of East Mississippi," Mississippi Historical Society Publications, Vol. 3, p. 367-371. The Rivers Basin, about 1732 depicts rivers and Indian villages; discusses Six Towns and Yowanis.

1755 John R. Swanton, "An Early Account of the Choctaw Indians," American Anthropological Association, Vol. V, No. 2, April-June, 1918. New York: Kraus Reprint Corporation, 1964, printed by permission of the Smithsonian Institution, p. 53-72. A French narrative entitled "Relation de La Louisianne" describes Choctaws customs and political division. "Yowani - 30 men."

1764 H. S. Halbert, "Choctaw Trials" folder no. 33 Alabama Department of Archives and History. Rowen's map of 1764 in Peter J. Hamilton's colonial Mobile "The Haiowanne (Yowani) trading path to Mobile was located about a mile West of Citronelle, where it united with the Big Trading Path near the 31st parallel about the center of Township 6, Range 4 West, Washington County, Alabama.

1772 H. S. Halbert, "Bernard Romans' Map of 1772," MHSP, Vol. 6, 1902, p. 415 - 439. Describes Romans' list of Choctaw towns and settlements, relative to contemporary boundaries. Clan relations, stories, meaning of words and occupants of some villages are given, including ancestors of petitioner.

1780 Washington County Deed Book "A", p. 66-67/Old Deed Bk. p. 70 ". . .Piamingo Hometac deeded land on Tombigbee River. . ."

1786 Treaty With The Choctaw, Hopewell, re-established boundaries of British cession and provided for trading posts. Ancestors of petitioners signed treaty.

1795 Jack D. L. Holmes, "The Choctaws in 1795." Alabama Historical Quarterly, Vol. 30, No. 1, Spring. Census lists names of villages and number of occupants.

1799 Jack D. L. Holmes, "1799 Alabama Census According to Spanish Records." The Alabama Genealogical Register, Vol. 8, September.

1800 Byrd Church. Meeting grounds at Indian Graves Branch dates back to earliest European contact. Organized by the Bob Cole family with the Brashears. Building moved up hill from branch and renamed Byrd Church until the Methodists came in the 1930s and renamed it Aldersgate. See 1930s Methodist Mission Records.

1801 Treaty with the Choctaw. A wagon trail was ceded through Indian lands; British boundaries re-established again. Petitioners ancestral leader, Hoche Homo (Hoshi Homa, "Red Bird") signed treaty; 2,641,920 acres ceded.

1802 Treaty with the Choctaw, Fort Confederation. British boundary line remarked by United States; title of lands released to U. S. including ancestral lands of petitioners who continued to live on said lands continuously and still do today. Signed by "In behalf of the Six Towns and lower town (Yowani); witnessed by Turner Brashears, who had a Choctaw family.

1802 Records of Choctaw Trading Post, St. Stephens, M.T., 1803-1810. Abstracted from NARC Microcopy T500, Rolls 1 and 2. Choctaw Trading House established at Fort St. Stephens on the Tombigbee Rivers, by the U. S. Government. Fr. Aloysius, "The Choctaw Trading House, 1803-1822." Alabama Historical Quarterly, Vol. 16, 1954; George S. Gaines, "Gaines Reminiscences." AHQ, Vol. 26, Nos. 3 and 4, Fall and Winter, 1964.

1803 Treaty with the Choctaw, Hoe-Buckin-too-pa (St. Stephens) Signed by "Chiefs residing on the Tombigbee near to St. Stephens," including Pio Mingo (home tac) and witnessed by Young Gaines, who had a Choctaw family; 853,760 acres ceded.

1805 Treaty with the Choctaw, Mount Dexter Reconfirmed reserve to John McGrew by Opi-a-mingo Hesnitta (Himeta) and others of 1500 acres. Ancestor of petitioners who signed is Hoosheehooma (Hoshi-homa, Red Bird), witnesses who had Choctaw families are William Colbert and Charles Juzan; 4,142,720 acres.

1811 Washington County News, November 1, 1962. "first settlers of Millry were members of Chief Tom Gibson's ("Eli-tubbee") Indian band, who started a village in 1811. The redskins remained some years, finally being driven away after a dispute with white settlers over a dam on the mill stream." Eli-tubbee was chief of a Six Towns village and ancestor of petitioners.

1813-1907 Deed Records in Mobile County Probate Office and Circuit Court Records pertaining to ancestors of petitioners.

1814-1815 Rolls of Capt. Pushmattahaw's Company of Choctaw Warriors in the service of the United States. Choctaw who fought in War of 1812 petitioned for payment of pension. Ancestors of petitioners: Pia-mingo, William Andrews (Andre), Charles Juzan, Iltanabbe, Elahotubbee (Eli-tubbee), Iou-a-cha (Hou-cha), Alabama Dept. of Archives and History.

1816 Treaty with the Choctaw, Fort St. Stephens. Confirming prior cession. Ancestors of petitioners who signed are Bob Cole, Hoopoieemiko (Opi-o-mingo); witness, Turner Brashear.

1818-1830 H. S. Halbert Papers. Folder No. 178. Alabama Dept. of Archives and History. Choctaw Schools sponsored by the U. S. Government. Lists schools and number of scholars. George Reed attended Juzan's school located near Mississippi-Alabama state line, under Rev. Alfred Wright. See also: H. B. Cushman. History of the Choctaw, Chickasaw and Natchez Indians, Greenville, Texas: Headlight Printing House, 1899, p. 70 - 91. American Baptist Magazine, Vol. 8, 275. Boston: Lincoln & Edmonds, 1828.

1820 Treaty with the Choctaw, Doak's Stand. Provisions made for those who wish to remain. Ancestors of petitioners who signed; Bob Cole, John Frazier, Capt. Red Bird; 5,169,788 acres ceded to U.S.

1825 Treaty with the Choctaw. Provisions made for Choctaws who desired to remain. Signed by Robert Cole, Nittuckachee.

1830 Treaty of Dancing Rabbit Creek, 1830; 10,423,130 acres ceded.

1830 Dancing Rabbit Creek Treaty. (See narrative)

1830 American State Papers, Public Lands. Doc. No. 1230, 23:1 "In Relation to the Location of Reservations under the Choctaw Treaty of the 27th of September, 1830. p. 1 - 139. This document is commonly known as the "Armstrong Roll."

1830 (approved 1836) List of Approved Locations under Choctaw Treaty, 1830. NARC RG75 Dept. of Interior.

See list at year 1881.

1831-34 Document 512. "Register of Choctaw names as entered by the agent previous to the 24th of August, 1831, who wish to become citizens, according to a provision of the late treaty in 1830.

1831 Document No. 1315, American State Papers, Public Lands, p. 641, No. 15, "List of names of those warriors who fought under General Wayne, and also the names of the orphans in the Northeastern district. Kachiloke, parent with two brothers.

1831 H. S. Halbert, "The Last Indian Council on Noxubee Rivers." Mississippi Historical Society Publications, Vol. 4, 1901, p. 271-280. Describes the feelings of the Choctaws who oppposed moving West, specifically the "Six Towns who were opposed to the treaty and declared that they would not go west." Elatubbee (Tom Gibson) was present.

Franklin L. Riley. "Choctaw Land Claims," MHSP, Vol. 8, 1904, p. 345 - 395. Discusses origin of the Choctaw claim: Article 14 of Dancing Rabbit Creek Treaty.

John Williams. "The Removal of the Mississippi Choctaws." MHSP, Vol. 8, 1904, p. 397 - 426.

1831-1834 Document 512. 23rd Cong., 1st Cess. Correspondence of the emigration of Indians, Choctaws. Names of Mowa ancestors appear p. 362 with George S. Gaines, Superintendent.

1833-1882 Writings of Southern journalists. James Stuart, Three Years in North America, Vol. II, New York: J & J Harper, 1833, p. 122-123; Frederic Bremer, The Homes of the New World: Impressions of America (1847-1851), New York, 1853, Vol. 11. Her sketch of Choctaws in 1851 in Mobile Public Library-Local Division: Charles Lanman, Adventures in the Wilds: The U. S. and British America, Vol. 2, 1856. p. 190197, "The number of Indians who spend much of their time in Mobile, but who live in the neighboring pine woods, is estimated at 1,000."; Harriet E. Amos, Cotton City: Urban Development in Antebellum Mobile. University of Alabama Press. 1985. (Copy from dissertation, p. 23-25.); Prieur Jay Higginbotham. The Mobile Indians, Mobile, Alabama, 1966. p. 80 ". . .just before and after the Civil War, there was a small Indian settlement on Spring Hill Avenue just east of the present Spring Hill College." Also, Choctaws . . . lived around Mount Vernon until about 1830."; Frances Beverly, "The Red Man in Mobile History," Federal Writer's Project, 1930s, copy in Mobile Public Library-Local History, "As late as 1882, there were remnants of a tribe that spent every winter in Mobile.

1835 Treaty with the Choctaw for safe passage through Indian Country.

1836 American State Papers, Public Lands. Doc. 1523, 24:1. "On Claims to Reservations under the Fourteenth Article of the Treaty of Dancing Rabbit Creek, with the Choctaw Indians. Communicated to the House of Representatives, May 11, 1936.

1836-1977 Land records of Mobile and Washington County. Original entry of petitioners ancestors, with sample sections traced to current owner.

1837 Choctaw Muster Rolls - Military Records Indian Affairs 1830-1840 Alabama Department of Archives and History. Chief Robert M. Jones, Band Choctaw warriors including Pierre Juzan, William Colbert, James Gibson, John Juzert.

1837-50 Choctaw Emigration Roll 1837-50 MF p. 0226 Choctaw Agency, April 27, 1847. The Sixtown of Intoomlaski party:

"Since the time of 1830 the Choctaws who remained in Miss. has been left to follow there own inclination, the greater part of them leading vagrant lives wandering not only through the state but generally in Louisiana and the southern part of Alabama and deriving a precarious subsistence by hunting and fishing in swamps. The

Counties. They number according to the opinion of the best judge about 3,000 souls including between 2 and 300 who have wandered off to the *seashore between Mobile* and New Orleans. The result of my observation from intercourse with them is that they will be got off with great difficulty. This owing to various causes."

MF 0434 Wm. Wilson, n.d. Emigration W88, Muster roll of 25 Choctaw Indians known as the Bay Indians who arrived 14 July 1847. received 10, Aug. 1847 MF/234, R-186. (cover o list, but no list.)

MF 0825 Philadelphia, MS. 19 June 1849. "I have incidentally learned that Col. McRae has passed up the river with 100 Indians collected on the Bay by Berry & Co."

1837 Treaty with Choctaw and Chickasaw, boundaries in districts in the West.

1839 *Minute Book A*, Washington County, Alabama, Orphans Court Record. Petition for Dower Rights by Pheba Juzan, widow of Charles Juzan. *Deed Book I*, Washington County, Alabama, p. 168. Pierre Juzan deed subject to relinquishment of Dower Rights by his wife, Eliza

1840s 10 Ala. 630. *Brashear v. Williams*, 11 Ala. 826 *Wall v. Williams*, "The act of 1832 extending the jurisdiction of this State over the Indian territory does not". . .take from a reservee, his citizenship as a Choctaw--the treaty securing the right of resuming his status in the tribe at pleasure and the right to live under his own laws and customs." (Sovereignty) This case has been quoted involving issues on Indian marriage and inheritance, acting as precedent in 32 cases through 1979.

1843 John Francis Hamtramck Claiborne Papers, No. 151 in the Southern Historical Collection at the Unviersity of North Carolina Library, Chapel Hill, North Carolina. "Testimony of Greenwood LeFlore, a witness summoned on the part of the U. S. Board of Choctaw Commissioners. Defines Choctaw customs of marriage, adoption of orphans, counting by sticks, and 14th Article claims.

1844 Letters Received re: Choctaws Emigration, Roll pp. 903-908. From George S. Gaines, Commissioner, to T. Hartley Crawford, Commissioner of Indian Affairs report on number of Choctaws left in Southeast.

1850-1990 Reed's Chapel Church. First Church built in 1850; first record of Baptist work among South Alabama Indians began in 1880; Records of Southern Baptists, Samford University Special Collections begin in 1918 and refer to petitioners as "South Alabama Indians." Oral histories about each church support annual reports of Baptists.

1854-1943 Records in Washington County Probate Office relating to ancestors of petitioners. Asbtracted.

1854-1950 Mobile County School Records. Before Civil War, ancestors of petitioners were trustees in local schools; after Civil War their schools were classified as non-white. Records are abstracted from Mobile County School Board Minutes, Mobile, Al.

1852 Letters Received by the Office of Indian Affairs, NARC Microfilm 234, Roll 172, Choctaw Agency West, 1852.

Subject: "Petition in behalf of all the Indians in South Alabama of the Choctaw nation who complain that Government Agents (illegible) to defraud them of their script rights." Over 400 Choctaws residing in Southern Alabama and near Mobile. . ."who do not wish to emigrate but to remain where we are and become citizens." To Hon. Millard Fillmore, President of the U.S. from four Choctaws who "signed in behalf of all the Indians of South Alabama of the Choctaw Nation." One signer was Hollimatabbe or Eli-Tubbee, Chief Tom Gibson.

Subject: "Report of F. S. Hunt of his investigation of charges made against James N. Bowman, late official agent for paying out Choctaw Scrip, with accompanying papers. To Hon. Luke Lea, Commissioner of Indian Affairs." Report on Sixtowns Choctaws in Mobile; mentions Felix (Andry) and Indian wife, (John) Lewis and Indian wife and (Tom) Gibson.

1853 Letters Received by the Office of Indian Affairs, NARC Microfilm 234, Roll 172, Choctaw Agency West, 1953

Subject: "In relation to a claim of a remnant of choctaw Indians--made by Mr. Felix S. Andry"--Letter from D. Mcvoy, M.D. of Mobile to Hon. A. H. H. Stewart, Secretary of the Interior. "Over 400 Choctaws living in the neighborhood. . .are altogether unwilling to remove West and wish to become citizens of this region."

1856 Census of Eastern Choctaws Prepared by Douglas H. Cooper, U.S. Indian Agent, 1856. Most names are phonetically spelled; includes Elah-tubbe (Chief Tom Gibson).

1862 S. G. Spann, Commander of Choctaw Forces, Mobie, Alabama, authorized by the Secretary of War to enlist all the Indians east of the Mississippi River into the service of the Confederate States as Scouts. The camp was located at the foot of Stone Street in Mobile. Sources from: Halbert, Folder No. 178, Alabama Department of Archives &

History; Confederate Veteran, Vol. 8, 1905, Nashville, TN; Muster Roll of Choctaw Regiment, Mississippi Department of Archives & History.

1863 Captain Toomer's Company, Muster Roll, Chunchula, Alabama. An ethnic regiment of Choctaws and mixed-blood Indians. Captain Toomer's Company Local Defense and Special Service Alabama (Chunchula Guards) subsequently became Co. G, 4 Alabama Reserves, Confederate.

1870 U. S. Census: Indians identified in Mobile County - 9.

1880 U. S. Census: Indians identified in Mobile County - 19: in Washington County - 2.

1881 NARC, RG 123, U.S. Court of Claims, General Jurisdiction Case Files, 1855-1939, Case No. 12742: The Choctaw Nation of Indians v. The United States. All bound in one volume, totaling 1240 pages. Depositions of Mowa ancestors confirm oral history. James Campbell, Alexander Brashears, Charles Frazier, Robert Cole, Peter Cole, Eli-Tubbee, alias Tom Gibson, Pierre Juzan; also described the "Bay" Indians (name given to Choctaws who lived near Mobile Bay).

1882 H. S. Halbert, Folder No. 11, Choctaw Baptist Mission. Al. A & H Baptist Mission among the Choctaws of Mississippi and Alabama began in 1882. Report of Rev. N. L. Clarke p. 41, "The Association in the session at Fellowship in 1891, appointed Brother Isham Johnston at labor at State Line. . .these brethern, all Choctaws, accepted these appointments."; Antiock Association in 1895 appointed Charly Thomas to preach to the indians living on the Gulf Coast."; the west, the Indian mission practically cease. But in 1904 the General Association resumed its work among the scattering bands that still cling to the land of their forefathers."

1884 Papers of Edward Palmer. Note made april 6, 1884, in Mobile, "These Indians have a few of these mortars among them. (T) met a party in Mobile who informed me (that) they made them." Palmer was a scientist in the employ of the Bureau of American Ethnology, who made severl trips through Alabama in the period 1883-88, principally looking for mounds and archaeological finds. Collection located at Alabama Dept. of Archives and History. (AA&H)

1889-1897 H. Austill, "White Man's Friend: Choctaw Chief, Pushmataha, A Native Great Man." The Daily Register, Mobile, Aug. 21, 1897. Choctaws seen on streets of Mobile.

James M. Glenn, PH.D. "Indians Still Make Homes in South Alabama Counties: Familiar Figures in Small Towns." "The writer has seen members of the Choctaw tribes in upper Mobile County." The Birmingham News, Sunday, May 15, 1927. From Glenn Scrapbook in Alabama Dept. of Archives and History, entitled "Sketches of Alabama."; also, Montgomery Advertiser, Wednesday, February 14, 15, 1951.

1890 U. S. Census (manuscript burned) population totals only available. Indians identified in Washington County - 0; in Mobile County - 402 (plus 384 Apaches).

1896-1911 Proposed Legislation for the Full-Blood and Identified Choctaws of Mississippi, Louisiana, and Alabama with Memorial Evidence, and Brief. Source: Indian Archives, Oklahoma Historical Society.

1899 NARC, RG 75, Central Classified Files, 1907-39, 93927-1911-053 Choctaw. Supplement to McKennon Roll. Letter reporting names of Choctaws who were left off approved roll of Mississippi Choctaw Indians.

1900 U. S. Census, Indians identified in Washington County - 0; in Mobile County - 5.

1900-1920s Enrollment in the five Civilized Tribes. Hearings before the Subcommittee of the Committee on Indian Affairs, House of Representatives, on the Subject of Enrollment in the Five Civilized Tribes, having under consideration the following bills: 3389, 3390 6537, 7926, 7974, 8007, 10066, 10140, 12586 "The Mississippi Choctaws." Source: Library Oklahoma Historical Society. Contains List of Mississippi Choctaw Indians to whom patents were issued for land under the provisions of article 14 of the Treaty of Sept. 27, 1830 (7 Stat. L, 333-335); List of Mississippi Choctaw Indians in whose behalf scrip was issued under the provisions of the act of Congress of August 23, 1842 (5 Stat. L., 513) in lieu of land to which they were entitled under Article 14 of the Treaty of September 27, 1830. List of names and testimony of Mowa Ancestors.

1902 NARC, Entry 267, Box 4. "List of Persons whose names appear on Identification Roll of Mississippi Choctaws, approved by Act of June 28, 1898 (30 Stat. L., 495), but who were not enrolled on the final rolls of Mississippi Choctaws entitled to allotments in the Choctaw nation under the provisions of the Act of July 1, 1903 (32 Stat. L., 641). Dawes Enrollment, they were identified as Mississippi Choctaws, but did not remove.

1906-1909 Eastern Cherokee Applications of the U.S. Court of Claims. Microcopy 1104: Roll 333 - Application Nos. 43551-43700; Roll 320 - Application Nos. 41601-41750; Also

Appl Nos. 17390-17395 Abstract of names of ancestors of petitioners.

1910 U. S. Census, Indians identified in Washington County - 172; in Mobile County - 7.

1910 John R. Swanton. "Early History of the Creek Indians and their Neighbors." Smithsonian Institution, Bureau of American Ethnology. Bulletin No. 73, Washington: Government Printing Office. 1922. "Census returns of 1910 lists. . .57 Indians in Alabama." Also, "Choctaw Population Subsequent to 1834."

1917-1965 Washington County School Records. Minutes of Washington County Board of Education, abstracted.

1920 U. S. Census, Indians identified in Washington County - 10; in Mobile County - 12.

1924 Brandon Report. Hilary Herbert Holmes, "The so-called Cajan Settlements in Southern part of Washington County, Alabama: (Indians)" A survey made for Governor William W. Brandon, Governor of the State of Alabama. Report was triggered by events leading to the murder of local deputy sheriff.

1929-1940 Laura Frances Murphy, "How Scarritt Students Use Vacations," The Trained Lay Worker, Vol. II, No. 5, December, 1929; "Byrd Settlements--A New Field of Service," Missionary Voice:, "Among the Cajans of Alabama," Missionary Voice, November 1930; "The Cajans at Home." Alabama Historical Quarterly, Winter, 1940, p. 416-427.

1930 U. S. Census, Indians identified in Washington County - 0; in Mobile County - 50.

1934 Indian office file No. 55742-1934; file no. 150. Letter from Mrs. Elvin Byrd requesting information on Indian Service Work. Report on findings was submitted to the Commissioner of Indian Affairs by Dr. W. Carson Ryan, Jr., Director of Indian Education.

1940 U. S. Census - No statistics on Indians

1940s World War II - Registration Card No. 34802839, Leon Taylor identified as Indian.

1941 Alyce Billings Walker, ed. Alabama: A Guide to the Deep South. Reprinted, New York: Hastings House, 1975. Tour 9 describes Alabama Cajan Indians and refutes "Cajan" designation. p. 366-369.

1948 William Harlen Gilbert, Jr., "Surviving Indian Groups of the Eastern United States." *Annual Report of the Board of Regents o the Smithsonian Institution for 1948 (1949): 407-438*. See No. 18, Alabama.

1950s Docket 21, Indian Claims Commission.

1970 Letter from R. A. Boykin to Mr. David Scott, Program Associate Education for American Indians Unit regarding Indian school in Washington County, Alabama; letter from David Scott to Mr. R. A. Boykin regarding this issue.

1976 *Report of American Indian Policy Review Commission*. Chapter 11, Nonrecognized Tribes," p. 468, Choctaws in Mobile and Washington Counties, 4,000. Source: Gamage Rivers.

1979 Alabama House and Senate recognized sovereign rights of Choctaws of Mobile and Washington County, Alabama and create Mobile - Washington Counties Indian Commissions.

1979 Choctaw Council of Mobile and Washington Counties, Alabama create a non-profit corporation for civic, religious, and educational reasons and adopt by-laws governing the non-profit corporation.

1980 Alabama Attorney General, Charles Graddick gives opinion confirming Choctaws of Mobile and Washington County still having their rights as a sovereign tribe.

1980s Indian Rights Case - Gallasneed Weaver

1981 Letter from Edward B. Freeman, Department of Special Missions, Southern Baptist Convention to Rev. and Mrs. Elbert R. Isbell missionaries assuring them that "the ministry which you direct to be a mission ministry among American Indians of Choctaw heritage since the work was begun with a survey of the field in 1921. These ministries have been conducted by Southern Baptists under the overall program of missions to American Indians throughout this entire sixty year period.

1985 Report to the Mowa Band of Choctaw Indians Concerning their Federal Petition to the United States for Federal Recognition submitted by Kenneth York, Mississippi Choctaw, March 30, 1985.

1985 Choctaw Council of Mobile and Washington Counties, Alabama vote to follow the traditional form of tribal democracy and draft a new constitution.

STATEMENT OF SENATOR JOHN McCAIN

I AM PLEASED TO HAVE THIS OPPORTUNITY TO EXPRESS SOME GENERAL VIEWS ON THE TRIBAL RECOGNITION AND RESTORATION BILLS WHICH ARE THE SUBJECT OF THIS HEARING. IN ADDITION TO THESE BILLS, WE HAVE ONE OTHER RECOGNITION BILL PENDING BEFORE US, S. 901, THE LUMBEE RECOGNITION ACT.

FROM MY PERSPECTIVE, THESE BILLS ALL POINT UP TO THE NEED FOR US TO ENACT LEGISLATION TO PROVIDE UNIFORM STANDARDS AND PROCEDURES FOR EXTENDING FEDERAL RECOGNITION TO INDIAN TRIBES. IN THESE FIVE BILLS WE FIND VERY DIVERGENT UNDERLYING FACTUAL SITUATIONS. ONE TRIBAL GROUP WAS APPARENTLY TERMINATED BY FEDERAL ACTION AND NOW SEEKS A RESTORATION WHICH CANNOT BE ACCOMPLISHED EXCEPT BY LEGISLATION. ANOTHER GROUP IS STATE RECOGNIZED AND ELIGIBLE FOR SOME FEDERAL SERVICES BUT HAS NEVER BEEN FEDERALLY RECOGNIZED. YET ANOTHER GROUP WAS APPARENTLY OMITTED FROM AN EARLIER LEGISLATIVE SETTLEMENT THROUGH AN OVERSIGHT. ALL OF THESE GROUPS BELIEVE THEY ARE ENTITLED TO FULL FEDERAL RECOGNITION AND THEY HAVE ALL PERSUADED ONE OR MORE OF OUR COLLEAGUES THAT THIS IS INDEED THE CASE.

IN THE PAST, I HAVE VOTED FOR BILLS THAT ARE SIMILAR TO SOME OF THOSE WHICH ARE BEFORE US NOW. AS I HAVE BECOME MORE

FAMILIAR WITH THE NATURE OF CLAIMS FOR RECOGNITION, I HAVE BECOME LESS AND LESS COMFORTABLE WITH THE LEGISLATIVE RECOGNITION PROCESS. WHAT CRITERIA ARE WE APPLYING TO EVALUATE THESE CLAIMS? WHAT EXPLICIT DIRECTION HAVE WE GIVEN TO OUR STAFF SO THAT THEY CAN PROVIDE US WITH THE INFORMATION THAT WOULD BE NECESSARY TO ENSURE THAT ALL UNRECOGNIZED GROUPS ARE TREATED EQUALLY? WHAT ABOUT THOSE GROUPS WHICH LACK THE FINANCIAL RESOURCES AND THE "POLITICAL CLOUT" NECESSARY TO PUSH A BILL THROUGH THE CONGRESS?

RECOGNITION IS NO SMALL MATTER. IT IS THE VERY ESSENCE OF THE SPECIAL GOVERNMENT-TO-GOVERNMENT RELATIONSHIP BETWEEN THE TRIBES AND THE FEDERAL GOVERNMENT. IT IS AN ESSENTIAL PART OF THE TRUST RESPONSIBILITY. YET, FOR YEARS THE CONGRESS HAS LARGELY IGNORED THIS ISSUE WITH THE EXCEPTION OF OCCASIONALLY ENACTING A LAW TO EXTEND RECOGNITION TO A PARTICULAR TRIBE.

MEANWHILE, THE BUREAU OF INDIAN AFFAIRS HAS ESTABLISHED ITS OWN ADMINISTRATIVE PROCESSES AND CRITERIA FOR SECRETARIAL RECOGNITION OF TRIBES. IN PREVIOUS HEARINGS WE HAVE HEARD NUMEROUS COMPLAINTS ABOUT THE UNRESPONSIVE AND ARBITRARY NATURE OF THIS ADMINISTRATIVE PROCESS. WHETHER THESE COMPLAINTS ARE ENTIRELY ACCURATE IS ALMOST BESIDE THE POINT. THE FACT IS WE HAVE TWO DIFFERENT SYSTEMS IN PLACE FOR

EXTENDING FEDERAL RECOGNITION TO INDIAN GROUPS. THE LEGISLATIVE PROCESS LACKS CLEAR STANDARDS OR CRITERIA AND THE ADMINISTRATIVE PROCESS IS, AT THE LEAST, EXTREMELY SLOW AND CUMBERSOME.

MR. CHAIRMAN, I APPLAUD AND COMMEND YOUR EFFORTS TO IMPROVE THE ADMINISTRATIVE PROCESS. I AM HOPEFUL THAT LATER THIS YEAR WE WILL BE ABLE TO SECURE PASSAGE OF LEGISLATION WHICH WILL FINALLY ESTABLISH A FAIR, PROMPT AND COST EFFECTIVE FORUM FOR RESOLVING ALL OUTSTANDING CLAIMS TO FEDERAL RECOGNITION. ONCE WE HAVE DONE SO, IT SEEMS CLEAR TO ME THAT WE SHOULD NO LONGER EXTEND RECOGNITION THROUGH LEGISLATION.

I WILL WITHHOLD JUDGMENT ON EACH OF THE BILLS WHICH HAVE BEEN REFERRED TO THIS COMMITTEE. THE PREFERRED COURSE OF ACTION IS TO PROCEED WITH LEGISLATION WHICH ESTABLISHES UNIFORM CRITERIA AND STANDARDS RATHER THAN TO CONTINUE TO TAKE THIS CASE-BY-CASE, GROUP-BY-GROUP APPROACH HERE IN THE CONGRESS.

HISTORICAL LEGAL PERSPECTIVE OF CHOCTAWS OF MOBILE AND WASHINGTON COUNTIES, ALABAMA

BY

JOHN DOUGLES RIVERS

The first contact between the Sixtown Yowani Choctaw of Alabama and the Europeans in 1702 proved to be a blessing and a curse for the Choctaw people. The Choctaws' early relationship with the French produced periods of prosperity, but also caused them to suffer much animosity from not only the Americans, but other Choctaws located in the interior of the nation.

The Sixtown Yowani Choctaw vehemently opposed the signing of any treaty calling for their removal from their home in Alabama. The Treaty of Dancing Rabbit Creek, signed in 1830, guaranteed that we, as Choctaws, would be able to stay on our ancestral land if we chose to do so and "would not lose our rights as Choctaw citizens and would remain a sovereign people retaining our customs and laws." However, to the dismay of many of my ancestors, this promise was never fulfilled by the white man.

In a feeble attempt to comply with the treaty, the United States Government sent its agent, Col. Ward to sign up the Indians who wished to stay and grant to each an allotment of land. Col. Ward signed a few people, but told the majority of Choctaws that we could not stay and would have to remove to Oklahoma. Choctaw Chief Elitubbe, Tom Gibson, pleaded with Col. Ward to sign all those that wished to stay, as provided in the treaty. Each of Elitubbe's numerous attempts to persuade Col. Ward to comply with the treaty were denied.

When it came to the attention of Elitubbe that the book containing the names of the Choctaws previously signed had been destroyed, he approached Col. Ward about having the names replaced. Col. Ward said no, and that the Choctaws would have to remove to Oklahoma.

It was the feeling of the Sixtown Yowani Choctaw that we would rather die than leave our beautiful home. It was promised by the Commissioners of Dancing Rabbit Creek Treaty that we would be allowed to stay. We refused to be removed to Oklahoma, or any other location.

Almost since the signing of The Treaty of Dancing Rabbit Creek, we have repeatedly petitioned congress for our rights. In 1836, we petitioned the United States Government regarding our complaints against government agents. We wrote President Millard Fillmore advising that we are here and that we were promised we would be treated fairly. In 1853, Felix Andre petitioned the Secretary of the Interior regarding the claim of remnants of Choctaw Indians. In the court of claims case in 1881, our ancestors James Campbell, Alexander Brashears, Charles Frashier, Robert Cole, Peter Cole, and Elitubbe again testified that we are here in Mobile. We have written letters and we have given testimony. Our brothers in Oklahoma have given testimony about the ones who were left in Alabama. We continually ask that our rights be recognized and acknowledged.

In 1902, we petitioned congress again because of the final rolls of the Mississippi Choctaws, called the Dawes Enrollment. The remoteness of our area, our paramount mistreatment suffered at the hands of our neighbors and our lack of education combined to make it almost impossible for us to travel the great distances to be counted. Many of the few that were able to make the trip were turned away because they were 7/8, 3/4, or 1/2 Choctaw, (due to our French and American ancestors) instead of "full blood." In Oklahoma, those with as little as 1/8 Choctaw blood were allowed to be counted Indian.

Our situation has not improved much over the years. The younger generations of Choctaws were blessed with their own schools, which were established by Baptist and Methodists missionaries. I was one of the fortunate ones to get an education at the Choctaw schools, and continued my learning on a collegiate level at Bacone Indian College in Muskogee, Oklahoma. Others, such as my father were not so fortunate. The Indian schools existed and operated until the State of Alabama forced desegregation of the tri-racial school system.

I realize that many of you here today are from the West, and are perhaps most familiar with the Indians of that region. Although we are different from the Western Indians, we have the utmost respect and admiration for them. I was married to a White Mountain Apache, and others in our community are married to Creeks from Oklahoma, Kickapoos from Kansas and Navajos from Arizona. However, if you were to analogize the tribe closest in similarities to the Choctaw of South Alabama, I believe it would be the Matize Chippawa of Montana. They wandered for so many years with opposition from everyone as to who they were and where they belonged. Finally, through their perseverance, they were able to settle in their home land of Montana.

We, the Choctaws of South Alabama have continually served our country. We have fought for the United States in every war since the Revolutionary War. We have always been friends and allies of the Americans. Many of our leaders were half French or half

American, and we've been made to suffer for that.

We have presented our issues to the Bureau of Indian Affairs, and they have assured us that they are doing everything possible to assist our needs. Due to their heavy work schedule, they have advised us that it could be at least ten years before they can complete their review of our documentation. Ten years is more than we can afford to wait.

At this time, we again come before the Congress of the United States, the only people who can help us correct the injustice that our people have been made to suffer for so many years. Congress is the only body that has the Constitutional authority to enter into treaties with tribes. We ask that you acknowledge our rights under the Treaty of Dancing Rabbit Creek.

Thank you for you time.

JOHN DOUGLES RIVERS

BRIEF IN SUPPORT OF THE FEDERAL ACKNOWLEDGEMENT PETITION OF CHOCTAW INDIANS OF MOBILE AND WASHINGTON COUNTIES, ALABAMA

BY JOHN DOUGLES RIVERS

QUESTION PRESENTED

WHETHER THE MOWA CHOCTAW INDIAN TRIBE IN ALABAMA RETAINS THE RIGHTS, LAWS, CUSTOMS, AND "SOVEREIGNTY" GUARANTEED THEM UNDER THE TREATY OF DANCING RABBIT CREEK.

STATEMENT OF THE FACTS

In the 1820's President Andrew Jackson signed an Indian removal act that forced most Choctaw Indians to leave Alabama. In 1830, under the Treaty of Dancing Rabbit Creek, the Choctaws gave up almost all of their land east of the Mississippi except for reservation land that was given to certain Choctaws.

Choctaws who had neither the heart nor the desire to leave moved to more remote Choctaw Indian communities located in North Mobile and South Washington Counties. These Indians became known as the Mobile, Washington County Band of Choctaw Indians and are more commonly referred to as Mowa Choctaws.

In exchange for the sale of this land under the treaty, the Choctaw Indians were given the right to "live under their own laws in peace with the United States and Alabama."

The Choctaws of Mobile and Washington Counties are now seeking federal acknowledgement of their rights as guaranteed under the Treaty of Dancing Rabbit Creek and to ask the federal government to abide by the treaty obligations that the Senate approved 150 years ago.

DISCUSSION

The Mobile Washington County Band of Choctaws is a tribe of Indians within the generally accepted meaning of that term even though they are not yet formally acknowledged by the Department of Interior, or by the United States Congress.

"An Indian tribe is a body of Indians of the same or similar race, united in a community under one leadership or government, and inhabiting a particular though sometimes ill defined territory." United States v. Candelaria, 271 U.S. 432 (1926), 441, 442.

The Mowa Choctaw tribe are the aboriginal inhabitants of the area that is now South Alabama. They continue to govern themselves and to preserve their culture and customs and traditions as distinctly Indian. They have repeatedly been identified as an Indian tribe by local institutions and state government, and in an opinion issued by the Attorney General's office in 1981, the Mowa Band of Choctaw Indians was recognized by the State of Alabama by virtue of two 1979 local Acts (numbers 79-454 and 79-228).

Most important, they were recognized as a separate tribal entity by the United States in its Treaty of Dancing Rabbit Creek of 1830. This treaty provided that persons who claimed under it "shall not lose the privilege of a Choctaw citizen, but if they ever remove, are not entitled to any portion of the Choctaw annuity. Walls v. Williams, 11 Ala. 826 (1847).

Once considered a political body by the United States a tribe retains its sovereignty until Congress acts to divest that sovereignty. Harjo v. Kleppe, 420 F. Supp. 1110 (D.D.C. 1976).

The Mowa Choctaw tribe submits to this court that it was recognized as a sovereignty in the 1800's and has maintained that status ever since.

By Act of 1832, the State of Alabama's jurisdiction over Indian territory was extended. However, this act in effect abolished only the laws, usages and customs of the Creek and Cherokee nations of Indians, leaving those of the Choctaw in full force as guaranteed under the Treaty of Dancing Rabbit Creek, except as far as they might interfere with the exercise of jurisdiction conferred upon the tribunals of the states. Walls, p. 838.

To date, there has been no act of Congress which has abolished the sovereignty of the Mowa Choctaws as guaranteed them by the Treaty of Dancing Rabbit Creek.

From the earliest years of the Republic the political independence of self governing status of Indian tribes has been recognized by the courts. Worcester, 31, U.S. (6 Pet.) 515 (1832). Following this decision, the states were barred from regulating within Indian country. Tribal power was exclusive, subject only to federal preemption.

In 1972 the Passamaquoddy Tribe of Maine sued to compel the United States to bring suit against the State for loss of several million acres of its aboriginal lands under a 1794 treaty between the tribe and Massachusetts (Maine's predessor). The federal government had refused because the Interior Department claimed the tribe had never been recognized by the United States and therefore could not enjoy the protection of the Act. The 1st Circuit Court of Appeals affirmed the District Court that the tribe was included in the act. The State of Maine had stipulated to the fact that the Passamaquoddy's were a tribe racially and culturally. The Court rejected the idea, prevalent in the 1960's and 1970's, that tribes which had not been subject to some specific act of recognition, such as a federal treaty or a stature naming the tribe, were therefore unrecognized as tribes for the purpose of all federal statutes and programs.

> "No one in this proceeding has challanged the tribe's identity as a tribe in the ordinary sense. Moreover, there is no evidence that the absense of federal dealings was or is based on doubts as to the genuineness of the Passamaquoddies' tribal status, apart, that is, from the simple lack of recognition." Joint Tribal Council of the Passamaquoddy Tribe v. Norton, 528 F. 2d 370, 376 (1975).

The Court held that the plain meaning of "any tribe of Indians" included the Passamaquoddies. It read the quoted language as encompassing all tribes of Indians. The court reasoned that the Act should be given its plain meaning, there being no evidence of any contrary congressional intent, legislative history or administrative interpretation; that the policy of the United States is to protect Indian title; that there was no reason to exclude the Passamaquoddy Tribe since it was stipulated to be a tribe racially and culturally; that there was no requirement that a tribe must be otherwise recognized by the federal government to come within the Act; and that even if "tribe" is thought to be ambiguous, it should be construed nontechnically and to the advantage of Indians so as to include the Passamaquoddies. Id. p. 376-77.

In Worcester, the court held that the tribes were domestic dependent nations whose relation to the Untied States resembles that of a ward to his guardian. p. 517.

The Court further stated that the relationship did not abolish preexisting tribal powers or make tribes dependent upon federal law for their powers of self government.

In Alabama-Coushatta Indian Tribe of Texas v. Mattox, 650 F. Supp. 282 (W.D.Tex. 1986). the state claimed that the Alabama Coushatta was not a tribe but a private association. The State claimed that the Supremacy clause did not apply because the tribe had been terminated in 1954 by Congress. The State therefore claimed that they could regulate tribal activities.

The Court held in 1954 the Congressional statute at issue did not terminate the existence of the tribe. When the State assumed the duties of the federal government its relationship with the tribe was based upon the tribe's separate and unique political status.

Under the present facts, the Mowa Choctaw Indians are in a better posture than the Alabama Coushatta's were. The Mowa Choctaws have already been recognized as a separate entity by Treaty. Their sovereign status was reaffirmed in an Act of 1832, when the State of Alabama abolished the rights of the Cherokee and Creek tribes, and left in full force the rights, laws and customs of the Choctaw. To date, there has been no action taken by the United States to divest the Mowa Choctaws of the rights guaranteed them under the Treaty of Dancing Rabbit Creek.

CONCLUSION

The Mowa Band of Choctaws was recognized as an Indian tribe well over 150 years ago and were guaranteed their rights to retain customs, laws, and sovereignty under the *Treaty of Dancing Rabbit Creek*. The tribe has maintained its customs, and a distinct Indian identity. There has been no act of Congress to divest the sovereignty of the Choctaw and therefore it remains. The Mowa Band of Choctaw Indians are recognized by the State of Alabama, local governments and institutions, and have been so recognized by United States for 150 years. They hereby respectfully request this Honorable Congress to abide by the treaty obligations and to formally acknowledge their sovereignty.

JOHN DOUGLES RIVERS

the clerk of the court, subject to the order of the court, a sum of money sufficient to pay the note sued on, interest and costs, and to introduce his co-defendant, Macon, as a witness, stating that Macon was but a surety to the note; but on plaintiff's objection, the court rejected the proposition, and charged the jury, that if they believe all the evidence, they must find for the plaintiffs.

The charge of the court is now assigned as error.

[For subsequent opinion, see 14 Ala. 593.]

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*W. P. Chilton, for plaintiff in error.

The court had no power to decide upon the facts, and take the determination of the case from the jury. Pistole v. Street, 5 Port. 64; Huff v. Cox, 2 Ala. 312; Vaughan v. Wood, 5 Ala. 305; Clemens v. Loggins, 1 Id. 622.

The jury might have inferred from the proof, that George Goldthwaite was but the agent of McIvor, in taking the note, and if so, he could not, by making it payable to himself, and indorsing it without consideration to his principal, "without recourse," prevent the defendant from having the benefit of the payment, if the jury should believe that the cotton was intended to pay his debt.

By the rules of the law merchant, the indorsee must have the bill protested, to hold the drawer liable, unless he shows no funds in the hands of the drawee. This note has not been protested.

Belser, contra. The legal presumption, in the absence of proof, is, that the note was indorsed before its maturity, and this shuts out the entire defence. Pinkerston v. Badley, 8 Wend. 600; Webster v. Lee, 5 Mass. 329; Stewart v. Greenleaf, 3 Day, 311; Pond v. Lockwood, 8 Ala. 674.

There was no proof of the agency of R. H. Goldthwaite, and his acts and declarations were not admissible. 1 Yeates R. 502; 1 W. C. C. R. 320.

The charge of the court did not deprive the jury of any right. Randolph v. Carlton, 8 Ala. 607; Smith v. Houston, Id. 737; Armstead v. Thomas, 9 Ala. 586; Sims v. Sims, 2 Ala. 117.

ORMOND, J.—We do not consider it necessary to determine whether such a case as this, is one in which the court would compel the defendant to join in a demurrer to evidence, because, conceding it be such, the court erred in its judgment. We have made the preceding remarks, because it is by analogy to a demurrer to evidence only, that such a charge as the present can be sustained.

No question arises upon this writ of error, of the propriety of the admission of the declarations of R. H. Goldthwaite, that he was the agent of his brother. We must therefore

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*consider th ct as proved, that R. H. G. was autho George Goldthwaite to act as his agent, in ascertaining the value of some improvements made by the defendant on the McIvor plantation, which he had rented, and it was fully proved that these improvements amounted to $200, which sum the agent stated was to be a credit upon the amount to be paid as rent.

It is not shown how much the rent was, nor is it shown that this note was given for the rent, but it bears date about that period, is payable to G. Goldthwaite, who, from the proof, it appears assumed to act for McIvor, in relation to the rent of the plantation, as he delegated his brother to ascertain the amount of the improvements, which was to be allowed as a credit against the rent. The note in suit was once in the possession of R. H. G., as the initials of his name, in his handwriting are found upon it. And this note is afterwards put in suit by McIvor, to whom it has been assigned without date and without recourse, by the payee. We will not say that this array of circumstances, unexplained, would compel a jury to infer that this note was given for the rent of the McIvor place, and was entitled to a discount of $200, for the improvements made by the tenant, but if the jury had so found, no court should have granted a new trial, and it follows that a court assuming to pass upon the effect of the evidence, was unauthorized to say, that a jury must have found for the defendant.

The facts p d in regard to the payment in the office of the payee of the note, shortly after its maturity, would be conclusive if the suit were now in the name of the payee, and the facts were not explained by him, so as to relieve the case from the natural and legal inference, that it was a payment of the note.

It is contended, that as the note is payable in bank, and therefore under our statute to be governed by the commercial law, and as the presumption arising from the blank indorsement is, that it was transferred before it was due, no evidence of set off or payment as against the payee is admissible. This is doubtless the general rule. Waiving for the present the consideration of the question,

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whether this *note was taken by the payee as the agent of McIvor, (if it be so found by the jury,) and whether in such a case a payment to the agent before notice of the transfer to the principal, would not be good, and considering it merely as a mercantile security, we think the circumstances attending the transaction, cast such a suspicion over it, as to require the indorsee to prove that he gave a valuable consideration for it, and acquired it before it was dishonored. Thompson v. Armstrong, 7 Ala. 256. In this aspect of the case, and under the proof as it was before the jury, the court should have instructed them to inquire, first, whether the defence of payment and set off were made out by the proof, and if so, that then the plaintiff could not recover without proving himself a bona fide holder.

It is not necessary to protest an inland bill of exchange to enable the holder to sue. The only effect of the protest is, to entitle the holder to damages. Leigh & Co. v. Lightfoot, at the present term [11 Ala. 935]. Let the judgment be reversed, and the cause remanded.

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11 Ala. 826.

WALL v. WILLIAMS, Use, &c.

1. It is not allowable to ask of a witness whether an Indian of the Choctaw tribe became a citizen of Alabama after the laws of the State were extended over the Choctaw territory. A direct answer to such a question is a conclusion of law, which the court should decide from the facts proved.

[Cited in Donnell v. Jones, 13 Ala. 506, 48 Am. Dec. 59.]

[See 20 Cent. Dig. Evidence, § 2170.]

2. Where a deposition contains a question and answer which discloses illegal testimony, it may be objected to on the trial; but where the objection is to the entire deposition, on a ground that it does not question the competency of the witness, the admissibility of the facts disclosed, or show that it had not been taken in conformity to the statutes, it seems that a motion should be made to suppress it before the cause is put to the jury.

[Cited in Donnell v. Jones, 13 Ala. 506, 48 Am. Dec. 59; Herbert v. Hanrick, 16 Ala. 588; Pritchett v. Munroe, 22 Ala. 569; Brantley v. Southern Life Ins. Co., 53 Ala. 556.]

[See 16 Cent. Dig. Depositions, § 309.]

3. The 9th section of the act of 1832, which requires that on contracts made with an Indian, the consideration shall be proved by two

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credible wit*nesses, extends not only to Indians of the full blood, but to the descendants of an Indian woman and a white man.

[See 27 Cent. Dig. Indians, § 16.]

4. Marriages among the Indian tribes must generally be considered as taking place in a state of nature, and if according to the usages and customs of the particular tribe, the parties are authorized to dissolve it at pleasure, the right of dissolution will be considered a term of the contract; and either party may take advantage of this term, unless it be expressly or impliedly waived by them, or they may perhaps acquire such relations to society as will give permanency to the contract, and take from them the right to annul it.

[Cited in Stikes v. Swanson, 44 Ala. 636.]

[See 17 Cent. Dig. Divorce, § 830; 34 Cent. Dig. Marriage, § 111.]

5. The act of 1832 extending the jurisdiction of this State over the Indian territory does not take from a marriage between members of the Choctaw tribe its dissoluble quality at the pleasure of the parties; nor can the asking a reservation under the treaty of Dancing Rabbit Creek, the acceptance of a patent from the United States for the land embraced by it, and the continued cohabitation in this State for more than five years after the ratification of the treaty, and the departure of the mass of their tribe to the west, have that effect. The concurrence of all these facts will not take from a reservee, his citizenship as a Choctaw—the treaty securing the right of resuming his status in the tribe at pleasure; nor will it warrant the assumption that the marriage was consummated in contemplation of a residence in Alabama.

[Cited in Stikes v. Swanson, 44 Ala. 636.]

[See 34 Cent. Dig. Marriage, § 111.]

Writ of Error to the Circuit Court of Sumter.

The defendant in error declared against the plaintiff in assumpsit on a promissory note, dated the 18th October, 1837, by which she promised to pay him on or before the first day of January next thereafter, $133 75. The defendant pleaded—1. Non-assumpsit. 2. That the plaintiff ought not to have and maintain his action, &c. because she says that at the time of making the several supposed promises and undertakings in the declaration mentioned, she was the wife of one David W. Wall, to wit, &c.; and this she is ready to verify, &c. To the second plea, the plaintiff replied that the defendant became the wife of said Wall under the usage and customs of the Choctaw tribe, and while subject to such usage, and in the territory then occupied by said tribe, and before Alabama had extended its jurisdiction over them; and by such usage the wife was entitled to contract as a feme sole. That at the time of bringing this ac-

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tion, the said Wall *had abandoned the defendant and left the country, and gone to his tribe without the intention of returning. Whereby the plaintiff avers that by the said usages and customs of said tribe, defendant became a feme sole. The defendant rejoined that after the marriage of the parties as aforesaid, according to the Choctaw usages, the said tribe removed west of the Mississippi, and the said Delila and David remained in the said county of Sumter, and became citizens of the State of Alabama, and lived under its laws as man and wife, and have never been divorced. To this rejoinder the plaintiff demurred, and his demurrer was sustained by the court. Thereupon the defendant again rejoined, admitting that the marriage was made as stated in the plaintiff's replication, and traversing the residue. She alledged further, that she became a citizen of the United States under the 14th article of the treaty of Dancing Rabbit Creek, and a citizen of the State of Alabama; and was, and still is the wife of David W. Wall. To this rejoinder the plaintiff also demurred and his demurrer was sustained. An issue was then formed on the replication, and the cause was thereupon submitted to a jury, who returned a verdict for the plaintiff, and judgment was rendered accordingly.

From a bill of exceptions sealed at the defendant's instance, it appears that the defendant lived in the Choctaw nation in 1828, was the daughter of a full blood Indian woman and a Frenchman—Wall was one-fourth Indian, and himself and defendant lived together as husband and wife from 1831 until seven or eight years preceding the below; when he killed a man, and to a prosecution, left the county and went to his tribe west of the Mississippi, and has never returned. But defendant has received letters from him, in which he threatened to return and take away her child. Defendant lived in 1842 or '3, where she did in 1828.

Another witness introduced by the plaintiff, stated that he had inquired into and informed himself as to the laws and customs of the Choctaws. The tribe had no written laws. They married and unmarried at pleasure—a man frequently having several wives. When a man found a woman he wished to marry, he made her a present of a blanket

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and she *became his wife—when he wished to dissolve the marriage, he abandoned her. The husband took no part of the wife's property by the marriage, and she retained all the rights of a feme sole.

It was admitted that the defendant and David W. Wall belonged to the Choctaw tribe, and both obtained reservations of land under the treaty of Dancing Rabbit Creek.

The defendant then offered a patent from the United States, dated 18th December, 1842, conveying to herself and children certain lands under the 14th article of the treaty of Dancing Rabbit Creek. She also read the deposition of one Brashear, stating that the marriage of herself and Wall was considered valid in all respects among the Choctaws—the tribe having jurisdiction at that time over the territory where it took place. Parties were sometimes married according to the laws, usages and customs of the Choctaws by a justice acting under the laws of the United States, sometimes by a captain, parson, or merely by consent of parents. That defendant and Wall lived together as man and wife about eight years, until July, 1839, and within half a mile of Moscow, Sumter county, Alabama. The deposition contained a question and answer, to which the plaintiff objected, as follows: "Did or did not the said D. Wall and Delila Wall become citizens of Sumter county, after the laws of the State of Alabama were extended over the Choctaw territory, which now constitutes Sumter county?" Answer. "The said David W. and Delila Wall became citizens of Sumter county, Ala." The objection was sustained, the question and answer ruled out, and thereupon the defendant excepted.

The defendant then introduced the deposition of another witness, who stated that he was acquainted with the law of marriage among the Choctaws up to 1833; that they were sometimes married by a minister, sometimes by a Choctaw ceremony, and sometimes a man and woman took each other (without ceremony), lived together and were considered man and wife. Marriages were also solemnized by a justice of the peace from an adjoining county itness was acquainted with D. W. Wa 1823 to 1839 at different places, a his late residence in Sumter county—the defendant had been known to him since 1829—she then lived at

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the *same place in Sumter county where she continued to reside up to 1844. Defendant and wall were considered husband and wife by the Choctaws and other persons residing among them; but there was no evidence that they had ever been naturalized according to the laws of the United States in respect to foreigners.

The court charged the jury—1. That the act of 1832, which required the consideration of contracts made with Indians to be proved by two credible witnesses, applied only to contracts made with Indians of the full blood; and consequently did not embrace the present case. 2. That a married woman was incapable of making a contract, so as to make herself liable; that, if the defendant and D. W. Wall were married according to the laws and customs of the Choctaws, the marriage would be regarded as valid in this State; but if by those laws and customs a married woman may contract as a feme sole, and she made the note sued on, she was bound by it, and liable for its payment. So, if by those laws and customs, the defendant and D. W. Wall could dissolve the marriage at pleasure by abandonment, and D. W. W. did abandon the defendant and dissolve the marriage before defendant made the note, then she was bound to pay it. That although the marriage might be valid according to the usages of the Choctaws then in force in their nation, yet the wife had the capacity to contract; provided, that under the Choctaw laws, she retained her property and the rights of a feme sole; and she was liable to be sued as a feme sole, if the marriage was dissolved. If the marriage was dissoluble at the pleasure of the husband, its dissolution might be inferred from the abandonment by the husband, and going to his tribe beyond the Mississippi, or elsewhere.

The defendant then prayed the court to charge the jury as follows: 1. If the defendant became a citizen of the United States by the 14th article of the treaty of Dancing Rabbit Creek, the laws and customs of the Choctaws were as to the defendant thereby abrogated, during the time that she continued to reside in this country; and her rights as a married woman became subject alone to the laws of this State and the United States. 2. If the defendant became a citizen of the United States, as supposed by the first prayer,

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and was *the wife of D. W. W., she was entitled to all the rights, and subject to all the incapacities of a married woman; and incapable in law of making a promissory note that would be binding upon her. These charges were refused by the court, and the jury were further instructed, that the defendant became a citizen of the United States by conquest of the Indian territory, and by the provisions of the treaty of Dancing Rabbit Creek, without herself or her husband ever having been naturalized. Yet the citizenship which the defendant thus acquired did not incapacitate her, if by the laws and customs of the Choctaw nation under which she became the wife of D. W. W., she was capable of making a contract. To all which rulings, and charges given and refused, the defendant excepted, &c.

J. Hair, Holt, and S. W. Inge, for the plaintiff in error, made the following points: 1. The rejoinder to the replication is a good answer to it. 1 Chit. Plead. 680–1. 2. The replication is a departure from the declaration, in relying on usages, customs, &c. of the Choctaws, instead of setting up matter of avoidance at common law. 1 Chitty's Pl. 681; 2 Saund. Rep. 840; 20 Johns. Rep. 163; 1 Cow. Rep. 319; 14 Mass. Rep. 103. Departure is matter of substance reached by general demurrer. 1 Chit. Pl. 686; 2 Saund. Rep. 84, note 1; 1 Wils. Rep. 122; 2 Id. 96; 4 T. Rep. 504; 2 Caine's Rep. 320, 329; 16 Mass. Rep. 1; 14 Johns. Rep. 132; 20 Id. 163. The replication does not answer the plea of coverture; 1 Chit. Plead. 612; 8 T. Rep. 545; 15 Mass. Rep. 31; and the demurrer should have been visited upon it. 1 Chit. Plead. 707; 1 Saund. Rep. 285, note 5; 8 East Rep. 442; 5 Cranch's Rep. 257; 2 Johns. Rep. 366; 7 Cow. Rep. 46.

3. The second rejoinder, filed after the demurrer was sustained to the first, is clearly good—the objection that it contains matter of confession, traverse and avoidance, is only ground of special demurrer. 1 Chit. Plead. 515, 642; 1 Saund. Rep. 337, note 3; Com. Dig. Pleader, E. 2; Bac. Ab. Pleas. K. 1; 1 Bos. & P. Rep. 415; 2 Johns. Rep. 433; Clay's Dig. 334, § 119.

4. The act of 1832, which requires the con-

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sideration of *contracts made by Indians to be proved, applies not only to Indians of the full blood, but to those of mixed blood also. Clay's Dig. 272. The terms of the statute are general, and it should not be limited by construction.

5. The defendant and her husband became citizens of Alabama under the treaty—they received reservations under it, and a patent issued to the defendant. An Indian may be made a citizen by treaty. Cons. U. S. art. 2, § 2; art. 6; 6 Pet. Rep. 515. By accepting a patent from the United States, the defendant signified her assent to become a citizen thereof, and Alabama having taken possession of the territory pursuant to treaty, took it with all the incumbrances imposed by the treaty, and cannot deny the citizenship acquired by the Indians under its stipulations. 4 How. Rep. (Miss.) 522, 555, 559 to 563; 2 Yerg. Rep. 421, 428–9, 454; 5 Id. 326 to 329.

6. The marriage of defendant and D. W. W. was contracted with a view of being continued in Alabama—the six months provided by the treaty for signifying their assent to become citizens of the United States, had previously expired. Story Confl. of Laws, § 190, 229; 2 Yerg. Rep. 438, 454; 5 Id. 326. The condition of a married woman is regulated by the law of the domicil. Story's Confl. of L. § 18 (1), 50 to 55, 64, 66 (a), 69, 70, 103, 181, 187 (5), 189 (7), 190 (8). See also p. 188; 2 Kent's Com. 459.

7. The abandonment of the defendant by D. W. W., did not dissolve their marriage—such a mode of dissolution is opposed to the laws of this State. Story's Confl. of Laws, § 221, 222, 223, 224, 225, 189, 226 (a. & b.) 228, 229, 322. See also p. 188, note; 2 Clark & F. Rep. 488, 520.

8. The objection to the question and answer in Brashear's deposition came too late, at the trial. 9 Ala. Rep. 744. The last charge given lays down the law incorrectly, in assuming that the defendant became a citizen of the United States by conquest of the Indian territory. 6 Peters' Rep. 515.

R. H. Smith, for the defendant in error, insisted that the replication was sufficient to avoid the plea of coverture; 2 Kent's Com. 157, note; 3 Ala. Rep. 537; 9 Id. 855; but

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*the rejoinder does not answer the replication. If there was an abandonment by the husband, it is not necessary that there should have been a divorce. The amended rejoinder is bad on general demurrer; because it confesses, traverses and avoids. 5 Ala. Rep. 490; 7 Id. 17. But if the demurrers were improperly sustained, the defendant has not been prejudiced. Coverture is admissible under the plea of non-assumpsit, (1 Chit. Plead. 469, 470;) and the bill of exceptions shows that proof of it was admitted at the trial. So that the defendant has had the full benefit of his defence, and cannot object to the insufficiency of the replication, or complain that his rejoinders have been adjudged bad. 4 Ala. 230. The capacity of the defendant to contract, or the effect of her marriage must depend upon the law of the place where she was married. 8 Ala. Rep. 48. It is apparent from the proof that she was not incapacitated by the marriage; and if she was, her competency we have seen, was restored by the abandonment of her husband.

It is not perceived that the question of citizenship is a material point in this case. But however this may be, it is clear that the treaty did not make her a citizen; it only entitled each Indian who desired to remain and become a citizen, to a reservation of lands, for which, after five years, they might receive a grant. This only conferred one of the rights of citizenship—that of holding lands.

The part of the testimony of Brashears which was excluded was incompetent, and the case from 9 Ala. Rep. 744, does not require an objection to a deposition such circumstances to be made previou tering upon the trial. But this question need not be pressed, as the charge of the court proceeded upon the hypothesis that the fact which the rejected answer affirmed, was proved.

The act of 1832 does not apply to an Indian who abandons his tribe and leads a civilized life. It is clearly indicated by the 4th and 9th sections, taken together, that the legislature intended to distinguish between "Indians, and persons of mixed blood descended of Indians."

COLLIER, C. J.—The question proposed *834 by the defend*ant below, to her witness Brashears, and his answer thereto, were rightly excluded by the circuit court. It is the province of a witness to narrate facts, and for the judge to decide the law arising upon them. But here the inquiry addressed to the witness required him to state, what was the status of the defendant and her supposed husband—a conclusion of law depending upon facts; the fact was matter of proof, but the effect of it was referable to the court. The case of Spence v. Mitchell, 9 Ala. 744, is unlike the present; there an objection was for the first time made at the trial, to the admissibility of a deposition, on the ground that all the questions proposed to the witness were not fully answered. We held, that as the deposition was regularly taken, the witness competent, and the facts disclosed admissible, the motion to suppress came too late. See also, Carter v. Mannings & Jackson, 7 Ala. 851. In the case before us, the deposition was not suppressed, but a single question and answer which were in themselves inadmissible, were excluded. It is the duty of the court to protect the jury against the admissions of illegal evidence, when it is objected to, no matter through what medium it is offered.

It is enacted, by the 9th section of the act of 1832, "to extend the jurisdiction of the State of Alabama, over the territory according to the geographical boundaries within the limits of said State, and for other purposes," "that in all cases where the suit is brought on contracts hereafter made, to recover money or property from any Indian, the consideration shall be proved by two credible witnesses." It is insisted by the counsel for the plaintiff below, and was ruled by the circuit court, that this section applies alone to Indians of full blood. This conclusion is rested upon the assumption that the legislature by using the terms, "Indians, or persons of mixed blood, descended of Indians," in the fourth section, recognized two distinct classes, and as Indians are alone mentioned in the ninth section, those of mixed blood are excluded from its operation. If our legislative acts were drawn with [illegible] unctilious regard to exactness of expre[illegible] he argument would be more potent; bu[illegible] all know that the dif- [illegible] of a statute are not always *835 written by the *same hand, and this will frequently account for a change of phraseology from general to special terms, and vice versa.

The fourth section concedes to "Indians, or persons of mixed blood, descended of Indians," the right to perpetuate testimony, in recording "wills, and bills of sale and conveyances, with the testimony of such persons." By the fifth section, white persons living in the Indian country are made subject to the laws applying to white persons living in any other part of the State. The second section authorizes the court of revenue and roads in any county embracing a portion of the Indian territory to cause such roads, bridges and ferries to be established within the same as the public good requires. By the third section, Indians are exempted from working on the roads, from performing military duty, and serving on juries; and it declares that no tax shall be assessed or collected "from any Indian, or person of mixed blood, descended of Indians, residing in this State. The sixth and seventh sections abolish the laws, usages and customs of the Creek and Cherokee nations of Indians within this State, contrary to the constitution and laws of the same; and it is made penal for either of these tribes, by "any Indian or Indians," to meet in council, &c., and make such laws for the government of the same. And the fourteenth section declares, that any contract freely and voluntarily made in writing, &c., whereby any white man shall purchase an improvement, &c., "of any Indian, on any of the unceded territory," &c., "shall be obligatory on the parties to such contract."

We cannot think the general term "Indians," was used in a literal or restricted sense, or intended to indicate a class of persons distinct from "persons of mixed blood, descended of Indians," but these latter terms were used ex majore cautela, by the draftsman of the section, or the part of it, in which they are found. They are mere expletives, and do not enlarge the operation of the act. The word "Indians," is sufficiently expansive to embrace them. It will not be contended, that the third section, in exempting Indians from the performance of military duty, working on roads, or serving on juries, applies exclusively to those of the full blood; or that a Creek or Cherokee of mixed blood could not be prosecuted and punished under the seventh section for meeting *836 in coun*cil, &c., and making laws for the tribe, contrary to the laws and constitution of this State. And there is quite as little pretence that the provisions of the fourteenth section are to be limited to purchases made of Indians of unmixed blood.

In common parlance, the word "Indians" includes not only those who have no admixture of blood with the white or negro races, but those descendants of Indians who have become thus mixed, yet retain their distinctive character as members of the tribe from which they trace their descent. The treaty with the Choctaws in 1830, gives to "each Choctaw head of a family being desirous to remain and become a citizen of the State," &c. six hundred and forty acres of land, and this has been held to embrace not only Indians of full, but those of mixed blood also.

The object of a requisition upon a party contracting with an Indian, was, in the language of the court of errors of New York, "to save the Indians from falling victims to their own weakness, and to the superior intelligence, and sometimes to the cupidity of the whites." The statute was intended, "as a guard against the imposition and frauds to which that unfortunate race of men are exposed, from their ignorance and mental debasement." Goodell v. Jackson, 20 Johns. 720 [11 Am. Dec. 351]. The ignorance of the half breed is in general quite equal to that of the Indian whose blood is unadulterated, and certainly requires the same protection for his rights. So far then as the reason of the enactment we are considering is concerned, they both come within its spirit, and we have seen that the language employed is sufficiently comprehensive to embrace them. It therefore follows that the charge of the circuit court, in limiting the operation of the act of 1832, misapprehended the law. See Pack v. Pack, 9 Port. 297.

The 14th article of the treaty referred to, is as follows: "Each Choctaw head of a family being desirous to remain, and become a citizen of the States, shall be permitted to do so, by signifying his intention to the agent within six months from the ratification of this treaty, and he or she shall thereupon be entitled to a reservation of one section of six hundred and forty acres of land, to be bounded by sectional lines of survey; in like manner shall be entitled to one half *837 that *quantity for each unmarried child which is living with him over ten years of age; and a quarter section to such child as may be under ten years of age, to adjoin the location of the parent. If they reside upon such lands, intending to become citizens of the States, for five years after the ratification of this treaty, in that case a grant in fee simple shall issue; said reservation shall include the present improvement of the head of the family, or a portion of it. Persons who claim under this article, shall not lose the privilege of a Choctaw citizen, but if they ever remove, are not to be entitled to any portion of the Choctaw annuity." 7 U. S. Statutes, by Peters, 335. It would perhaps have been more correct if the treaty had employed the term "inhabitant" or "resident" instead of "citizen of the States," as Indians cannot, consistently with the constitution and laws, be invested with all the rights, and bound to all the duties of citizens. But no consequence can result from the inaccurate use of a word in this instance; for the reservee who resided upon his reservation for five years after the treaty was ratified, intending to become a citizen, &c., was entitled to a grant in fee simple; yet by his claim of land he was "not to lose the privilege of a Choctaw citizen." Having obtained a title to his reservation, he could sell or abandon it at pleasure; his citizenship as a Choctaw never having been lost, it might be resumed without any other prejudice, than the loss of his interest in the Choctaw annuity. The fact then, that the defendant and her supposed husband had received patents for lands under the fourteenth section of the treaty, does not make them citizens; a grant to an Indian, or a foreigner, does not change his political or civil condition; either of them are competent to hold land under a treaty, or a legislative grant. 20 Johns. 693 [11 Am. Dec. 351]. It may be asked, as in the case here cited—Do our laws allow "Indians to participate equally with us in our civil and political privileges? Do they vote at our elections, or are they represented in our legislature, or have they any concern as jurors or magistrates, in the administration of justice? Are they subject to our laws of marriage and divorce, and would we sustain a criminal prosecution for bigamy, if they should change their wives or husbands at pleasure, and according to their own cus- *838 toms, and contract new matrimonial *alliances? I apprehend that every one of these questions must be answered in the negative;" at least so long as they continue a distinct and independent community.

In Wall v. Williamson, 8 Ala. 48, it was held that a marriage between a man and woman of Choctaw extraction and belonging to that tribe of Indians, according to their usages and customs, and before they were superseded by the laws of Alabama, will be recognized as valid. Further, that if by the Choctaw law, the husband took no part of the wife's property, the wife must as a necessary consequence retain the capacity to contract, yet she could not be sued in a court of law, while the marriage continued. The question is left open, whether the husband could dissolve the marriage by the abandonment of his wife, if they continued to reside in Alabama after their tribe had departed, but it is said to be "very clear that the same effect must be given to a dissolution of the marriage by the Choctaw law, as given to the marriage by the same law. By that law it appears the husband may at pleasure dissolve the relationship. His abandonment is evidence that he has done so. We conceive the same effect must be given to this act as would be given to a lawful decree in a civilized community dissolving the marriage. If the marriage was by the Choctaw law dissoluble at the pleasure of the husband, and was dissolved by [illegible] 'andonment, then the wife could be [illegible] as a feme sole. Lastly, abandonment was inferable from the fact of the husband leaving his wife, and going with his tribe west of the Mississippi. See also, Morgan v. McGhee, 5 Hump. 13; Hantz v. Sealy, 6 Bin. 405; Fenton v. Reed, 4 Johns. 52 [4 Am. Dec. 244]; State v. Murphy, 6 Ala. 765 [41 Am. Dec. 79], and cases there cited.

The decision in eighth Alabama Reports, covers almost the entire branch we are now considering of the case before us, and we think, if the jury affirm the truth of the facts stated by the witnesses at the trial, the defendant may be sued as a feme sole. It is said, "the characteristic features of the marriage contract is its permanency, for although it originates in the will of the parties, yet after being contracted, the duration of the union is wholly independent of the will of the parties." Shelf. on Marriage and

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Divorce, 3. But *when a man and woman agree to cohabit for an indefinite period as husband and wife, "that, in a state of nature, would be a marriage, and in the absence of civil and religious institutions, might safely be presumed to be, as it is popularly called, a marriage in the sight of God." It has been made a question how long the cohabitation must continue by the law of nature—whether to the end of life. In answer to that inquiry it is said, "that it cannot be a mere casual and temporary commerce, but must be a contract at least extending to such purposes of a more permanent nature in the intention of the parties. The contract thus formed in the state of nature, is adopted as a contract of the greatest importance in civil institutions, and it is charged with a vast variety of obligations merely civil." Id. 9. Marriages among the Indian tribes must be regarded as taking place in a state of nature, and if according to the usages and customs of the particular tribe, the parties are authorized to dissolve it at pleasure, the right of dissolution will be considered a term of the contract. Either party may take advantage of this term, unless it be expressly, or impliedly waived by them, or they may perhaps acquire such relations to society as will give permanence to the contract, and take from them the right to annul it.

It will be observed, that the cohabitation of the defendant and D. W. Wall commenced previous to the extension of the jurisdiction of this State over the Indian territory, by the act of 1832; that this enactment abolished only the "laws, usages, and customs of the Creek and Cherokee nations of Indians," —leaving those of the Choctaws in full force, except so far as they might interfere with the exercise of the jurisdiction conferred upon the tribunals of the State. There is then nothing in the statute which takes from the contract its dissoluble quality by act of the parties—nor c[illegible] asking a reservation under the treaty [illegible] acceptance of a patent from the United States for the land embraced by it, and the continued cohabitation in this State for more than five years after the ratification of the treaty, and the departure [illegible] the mass of their tribe to the west, have that effect. We have seen that all these cannot

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take from the defendant and D. *W. Wall their citizenship as Choctaws. The treaty secures to them the right of resuming [illegible] pleasure their status in the tribe, without reference to time. It cannot in this view of the case be assumed, that the marriage [illegible] consummated in contemplation of a residence in Alabama, so as to make this State the matrimonial domicil, and its laws govern the relation of the parties. Considering the character of the Indians, their indisposition to renounce native habits and associations, the residence of the parties, &c., such an assumption cannot be indulged.

This exposition of the law applicable to the pleading and facts stated in the record, may suffice to guide the action of the circuit court on a future trial. We will not stop to consider with particularity the questions arising upon the pleadings, or the charges asked or given to the jury, farther than has been already done. In limiting the operation of the 9th section of the act of 1832 to Indians of full blood, we have seen that the law was incorrectly ruled; the judgment is therefore reversed, and the cause remanded.

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11 Ala. 840.

SMITH v. ROBINSON.

1. It is no valid objection to a decree dismissing a bill having no equity, that the motion was made by a defendant in contempt for want of an answer.

[Cited in Atkinson v. Atkinson, 17 Ala. 257; Taylor v. Harwell, 54 Ala. 397; Madden v. State, 99 Ala. 224.]

[See 19 Cent. Dig. Equity, § 757.]

2. When the title to land is conveyed by the principal to his surety, to indemnify him against liability on a recognizance, with power to sell in case of default, and the surety sells and executes a title bond to the purchaser, the contract of sale will not be rescinded, although afterwards the recognizance is released by the Governor.

[See 48 Cent. Dig. Vendor and Purchaser, § 290.]

3. Where lands are sold, and the vendor executes a bond to make titles when the purchase money is fully paid, and he is unable to make a good title, the course of the purchaser is, to

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tender the purchase money, and de*mand a title, or at least, in a suit to enjoin proceedings for collecting the contract price, to aver the readiness to pay upon a sufficient title being made.

[Cited in Smith v. Robertson, 23 Ala. 319.]

Writ of Error to the Court of Chancery for the fourth District.

The case made by the bill is this:

Smith, the complainant, in 1838, contracted to purchase from Robinson, the defendant,

certain lands described in the bill, at the price of $1230, for which he gave his notes—one for $600, payable 1st January, 1839—one for $300 payable 1st January, 1840—and another for $330, payable 1st January, 1841—Robinson executed a bond, conditioned to make Smith title in fee simple when these notes should be fully paid. Smith took possession of the lands and retained possession for several years, in the course of which he paid 450 dollars on the note first coming due, and executed other notes for the residue of the sum of that note. Sometime after the payment of this sum, Smith ascertained, as he alledges, that Robinson had not a good title in fee to the lands sold, and that the real title was in one Harden, who at the time of filing the bill was dead, and who, previous to his death, had removed from this State to parts unknown. The heirs of Harden are alledged to be minors, but they are not parties to the bill. The complainant asserts that Robinson's only title to the lands is derived under a deed of trust executed to him by Harden. This is made an exhibit and conveys the lands sold by Robinson to Smith, to the former, with other property, on the nominal consideration of one dollar, reciting also that Robinson had become his surety for the sum of $2000, in a recognizance to appear and answer a certain criminal charge, and assumed other liabilities for him to the extent of $1650. The deed proceeds to declare, that the object in executing it is to secure Robinson against these liabilities, and if Harden should appear according to the recognizance, and discharge the other debts

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for which *Robinson was liable for him, then the property conveyed was to revert to him again, but in the event he should make default in any of the said matters, then Robinson was invested with power to dispose of, bargain, sell and make titles to the whole, or any part of the property conveyed, so as to indemnify himself from any damage which might accrue from the default.

The complainant asserts, that previous to the sale by Robinson of the lands, he had sold a sufficiency of the other property conveyed by the deed to indemnify himself, or nearly so, against all the liabilities except that arising out of the recognizance, from which he has been discharged by the Governor of the State, and that the remainder of his liability might have been met by a sale of part of the lands.

In view of these facts, complainant insists, the sale to him was without authority, and that having applied to Robinson for a rescission of the contract, he abandoned the lands.

The bill proceeds to show, that judgments have been obtained against the complainant, and some money paid on the outstanding notes. It concludes with a prayer that the contract may be rescinded and the complainant reimbursed what he has paid.

The chancellor, on motion of the defendant, dismissed the bill as containing no equity, although at the time of making this motion, the defendant was in contempt for not answering the bill.

This decree is assigned as error.

Pope, for the plaintiff in error, insisted—

1. The defendant being in contempt, could not be heard on a motion to dismiss. Massena v. Bartlett, 8 Porter's R. 277.

2. When a person having no title sells lands belonging to a third person, who dies before the period of payment, or before the title passes, equity will relieve against the contract for purchase and rescind it although there is no fraud. Bullock v. Bemis, 1 A. K.

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M. 434; 3 Cranch, 127; 1 Dev. Eq. 18; *Wellborn v. Tiller, 10 Ala. 305; Cullum v. Bank, 4 Ala. 21; Young v. Harris, 2 Ib. 112.

Chilton, contra, cited Brown v. Parish, 2 Dana, 8; Camp v. Camp, 2 Ala. Rep. 632; Spence v. Duren, 3 Ib. 251; Long v. Brown, 4 Ib. 622.

GOLDTHWAITE, J.—1. It is true, as a general rule, that a defendant to a suit in equity, who stands in contempt of the process of the court, will not be heard in the introduction of any new matter before the court, or to take merely formal objections to the proceedings. Mussina v. Bartlett, 8 Port. 277. But we apprehend this rule has never been considered as precluding the dismissal of a bill which has no equity on its face. Indeed, the 31st rule expressly provides that a defendant may at any time move to dismiss the bill, or dissolve an injunction for want of equity. Dig. 616, § 31.

2. On the merits of the bill, we entirely agree with the chancellor, that it contains no case for relief. When the conveyance from Harden is looked to, it will be seen he invests his creditor with the legal title to the lands which the complainant subsequently contracted to purchase, and expressly authorized the defendant to dispose of, bargain, sell, and make titles to the whole, or any part of the property conveyed, so as to indemnify himself from any damage which might arise from a default. Now, under this general power, it is very clear that neither Harden or his heirs can controvert the right of the complainant to have the title under his contract, although the defendant may have been relieved afterwards from his recognizance for Harden's appearance. It does not appear from any allegation of the bill, that at the time of the contract of sale, the defendant had not the right to sell by the terms of the trust deed. This allegation is essential, if the bill is to be considered as alledging a want of authority to sell, and renders it fatally defective.

3. If, in point of fact, the defendant was unable to make a good title in p[illegible]ance of his contract, it is not to be sup[illegible] that

TREATY WITH THE CHOCTAW, 1830.

pt. 27, 1830.
[illegible]
[illegible] Feb.

A treaty of perpetual friendship, cession and limits, entered into by John H. Eaton and John Coffee, for and in behalf of the Government of the United States, and the Mingoes, Chiefs, Captains and Warriors of the Choctaw Nation, begun and held at Dancing Rabbit Creek, on the fifteenth of September, in the year eighteen hundred and thirty.

WHEREAS the General Assembly of the State of Mississippi has extended the laws of said State to persons and property within the chartered limits of the same, and the President of the United States has said that he cannot protect the Choctaw people from the operation of these laws; Now therefore that the Choctaw may live under their own laws in peace with the United States and the State of Mississippi they have determined to sell their lands east of the Mississippi and have accordingly agreed to the following articles of treaty:"

Peace and friendship.

ARTICLE I. Perpetual peace and friendship is pledged and agreed upon by and between the United States and the Mingoes, Chiefs, and Warriors of the Choctaw Nation of Red People; and that this may be considered the Treaty existing between the parties all other Treaties heretofore existing and inconsistent with the provisions of this are hereby declared null and void.

Country to be conveyed to Choctaws.

ARTICLE II. The United States under a grant specially to be made by the President of the U. S. shall cause to be conveyed to the Choctaw Nation a tract of country west of the Mississippi River, in fee simple to them and their descendants, to inure to them while they shall exist as a nation and live on it, beginning near Fort Smith where the Arkansas boundary crosses the Arkansas River, running thence to the source of the Canadian fork; if in the limits of the United States, or to those limits; thence due south to Red River, and down Red River to the west boundary of the Territory of Arkansas; thence north along that line to the beginning. The boundary of the same to be agreeably to the Treaty made and concluded at Washington City in the year 1825. The grant to be executed so soon as the present Treaty shall be ratified.

Country ceded to United States.

ARTICLE III. In consideration of the provisions contained in the several articles of this Treaty, the Choctaw nation of Indians consent and hereby cede to the United States, the entire country they own and possess, east of the Mississippi River; and they agree to move beyond the Mississippi River, early as practicable, and will so arrange their removal, that as many as possible of their people not exceeding one half of the whole number, shall depart during the falls of 1831 and 1832; the residue to follow during the succeeding fall of 1833; a better opportunity in this manner will be afforded the Government, to extend to them the facilities and comforts which it is desirable should be extended in conveying them to their new homes.

Self-government secured to Choctaws.

ARTICLE IV. The Government and people of the United States are hereby obliged to secure to the said Choctaw Nation of Red People the jurisdiction and government of all the persons and property that may be within their limits west, so that no Territory or State shall ever have a right to pass laws for the government of the Choctaw Nation of Red People and their descendants; and that no part of the land granted them shall ever be embraced in any Territory or State; but the U. S. shall forever secure said Choctaw Nation from, and against, all laws except such as from time to time may be enacted in their own National Councils, not inconsistent with the Constitution, Treaties, and Laws of the United States; and except such as may, and which have been enacted by Congress, to the extent that Congress under the Constitution are required to exercise a legislation over Indian Affairs. But the Choctaws, should this treaty be ratified, express a wish that Congress may grant to the Choctaws the right of punishing by their own laws, any white man who shall come into their nation, and infringe any of their national regulations.

United States to protect Choctaws, etc.

ARTICLE V. The United States are obliged to protect the Choctaws from domestic strife and from foreign enemies on the same principles that the citizens of the United States are protected, so that whatever would be a legal demand upon the U. S. for defence or for wrongs committed by an enemy, on a citizen of the U. S. shall be equally binding in favor of the Choctaws, and in all cases where the Choctaws shall be called upon by a legally authorized officer of the U. S. to fight an enemy, such Choctaw shall receive the pay and other emoluments, which citizens of the U. S. receive in such cases, provided, no war shall be undertaken or prosecuted by said Choctaw Nation but by declaration made in full Council, and to be approved by the U. S. unless it be in self defence against an open rebellion or against an enemy marching into their country, in which cases they shall defend, until the U. S. are advised thereof.

Offences against citizens of United States, etc.

ARTICLE VI. Should a Choctaw or any party of Choctaws commit acts of violence upon the person or property of a citizen of the U. S. or join any war party against any neighbouring tribe of Indians, without the authority in the preceding article; and except to oppose an actual or threatened invasion or rebellion, such person so offending shall be delivered up to an officer of the U. S. if in the power of the Choctaw Nation, that such offender may be punished as may be provided in such cases, by the laws of the U. S.; but if such offender is not within the control of the Choctaw Nation, then said Choctaw Nation shall not be held responsible for the injury done by said offender.

Offences against Choctaws.

ARTICLE VII. All acts of violence committed upon persons and property of the people of the Choctaw Nation either by citizens of the U. S. or neighbouring Tribes of Red People, shall be referred to some authorized Agent by him to be referred to the President of the U. S. who shall examine into such cases and see that every possible degree of justice is done to said Indian party of the Choctaw Nation.

Delivery of offenders.

ARTICLE VIII. Offenders against the laws of the U. S. or any individual State shall be apprehended and delivered to any duly authorized person where such offender may be found in the Choctaw country, having fled from any part of U. S. but in all such cases application must be made to the Agent or Chiefs and the expense of his apprehension and delivery provided for and paid by the U. States.

Persons ordered from the nation, etc.

ARTICLE IX. Any citizen of the U. S. who may be ordered from the Nation by the Agent and constituted authorities of the Nation and refusing to obey or return into the Nation without the consent of the aforesaid persons, shall be subject to such pains and penalties as may be provided by the laws of the U. S. in such cases. Citizens of the U. S. travelling peaceably under the authority of the laws of the U. S. shall be under the care and protection of the nation.

Traders to require a written permit.

ARTICLE X. No person shall expose goods or other article for sale as a trader, without a written permit from the constituted authorities of the Nation, or authority of the laws of the Congress of the U. S. under penalty of forfeiting the Articles, and the constituted authorities of the Nation shall grant no license except to such persons as reside in the Nation and are answerable to the laws of the Nation. The U. S. shall be particularly obliged to assist to prevent ardent spirits from being introduced into the Nation.

Navigable streams, post-offices, and military posts.

ARTICLE XI. Navigable streams shall be free to the Choctaws who shall pay no higher toll or duty than citizens of the U. S. It is agreed further that the U. S. shall establish one or more Post Offices in said Nation, and may establish such military post roads, and posts, as they may consider necessary.

Intruders.

ARTICLE XII. All intruders shall be removed from the Choctaw Nation and kept without it. Private property to be always respected and on no occasion taken for public purposes without just compensation being made therefor to the rightful owner. If an Indian unlawfully take or steal any property from a white man a citizen of the U. S. the offender shall be punished. And if a white man unlawfully take or steal any thing from an Indian, the property shall be restored and the offender punished. It is further agreed that when a Choctaw shall be given up to be tried for any offence against the laws of the U. S. if unable to employ counsel to defend him, the U. S. will do it, that his trial may be fair and impartial.

Theft.

Agent.

ARTICLE XIII. It is consented that a qualified Agent shall be appointed for the Choctaws every four years unless sooner removed by the President: and he shall be removed on petition of the constituted authorities of the Nation, the President being satisfied there is sufficient cause shown. The Agent shall fix his residence convenient to the great body of the people; and in the selection of an Agent immediately after the ratification of this Treaty, the wishes of the Choctaw Nation on the subject shall be entitled to great respect.

Choctaws wishing to become citizens of United States.

Article XIV. Each Choctaw head of a family being desirous to remain and become a citizen of the States, shall be permitted to do so, by signifying his intention to the Agent within six months from the ratification of this Treaty, and he or she shall thereupon be entitled to a reservation of one section of six hundred and forty acres of land, to be bounded by sectional lines of survey; in like manner shall be entitled to one half that quantity for each unmarried child which is living with him over ten years of age; and a quarter section to such child as may be under 10 years of age, to adjoin the location of the parent. If they reside upon said lands intending to become citizens of the States for five years after the ratification of this Treaty, in that case a grant in fee simple shall issue; said reservation shall include the present improvement of the head of the family, or a portion of it. Persons who claim under this article shall not lose the privilege of a Choctaw citizen, but if they ever remove are not to be entitled to any portion of the Choctaw annuity.

Reservations for chiefs.

Annuities.

Pay of chiefs, etc.

Article XV. To each of the Chiefs in the Choctaw Nation (to wit) Greenwood Laflore, Nutackachie, and Mushulatubbe there is granted a reservation of four sections of land, two of which shall include and adjoin their present improvement, and the other two located where they please but on unoccupied unimproved lands, such sections shall be bounded by sectional lines, and with the consent of the President they may sell the same. Also to the three principal Chiefs and to their cessors in office there shall be paid two hundred and fifty dollars annually while they shall continue in their respective offices, except to Mushulatubbe, who as he has an annuity of one hundred and fifty dollars for life under a former treaty, shall receive only the additional sum of one hundred dollars, while he shall continue in office as Chief; and if in addition to this the Nation shall think proper to elect an additional principal Chief of the whole to superintend and govern upon republican principles he shall receive annually for his services five hundred dollars, which allowance to the Chiefs and their successors in office, shall continue for twenty years. At any time when in military service, and while in service by authority of the U. S. the district Chiefs under and by selection of the President shall be entitled to the pay of Majors; the other Chief under the same circumstances shall have the pay of a Lieutenant Colonel. The Speakers of the three districts, shall receive twenty-five dollars a year for four years each; and the three secretaries one to each of the Chiefs, fifty dollars each for four years. Each Captain of the Nation, the number not to exceed ninety-nine, thirty-three from each district, shall be furnished upon removing to the West, with each a good suit of clothes and a broad sword as an outfit, and for four years commencing with the first of their removal, shall each receive fifty dollars a year, for the trouble of keeping their people at order in settling; and whenever they shall be in military service by authority of the U. S. shall receive the pay of a captain.

Removal of Indians.

Article XVI. In wagons; and with steam boats as may be found necessary—the U. S. agree to remove the Indians to their new homes at their expense and under the care of discreet and careful persons, who will be kind and brotherly to them. They agree to furnish them with ample corn and beef, or pork for themselves and families for twelve months after reaching their new homes.

Cattle.

It is agreed further that the U. S. will take all their cattle, at the uation of some discreet person to be appointed by the President, and the same shall be paid for in money after their arrival at their new homes; or other cattle such as may be desired shall be furnished them, notice being given through their Agent of their wishes upon this subject before their removal that time to supply the demand may be afforded.

Annuities under former treaties.

ARTICLE XVII. The several annuities and sums secured under former Treaties to the Choctaw nation and people shall continue as though this Treaty had never been made.

Further annuity.

And it is further agreed that the U. S. in addition will pay the sum of twenty thousand dollars for twenty years, commencing after their removal to the west, of which, in the first year after their removal, ten thousand dollars shall be divided and arranged to such as may not receive reservations under this Treaty.

Survey of ceded lands, etc.

ART. XVIII. The U. S. shall cause the lands hereby ceded to be surveyed; and surveyors may enter the Choctaw Country for that purpose, conducting themselves properly and disturbing or interrupting none of the Choctaw people. But no person is to be permitted to settle within the nation, or the lands to be sold before the Choctaws shall remove. And for the payment of the several amounts secured in this Treaty, the lands hereby ceded are to remain a fund pledged to that purpose, until the debt shall be provided for and arranged. And further it is agreed, that in the construction of this Treaty wherever well founded doubt shall arise, it shall be construed most favorably towards the Choctaws.

Reservations of land, for—

ARTICLE XIX. The following reservations of land are hereby admitted. To Colonel David Fulsom four sections of which two shall include his present improvement, and two may be located elsewhere, on unoccupied, unimproved land.

Certain individuals.

To I. Garland, Colonel Robert Cole, Tuppanahomer, John Pytchlynn, Charles Juzan, Johokebetubbe, Eaychahobia, Ofehoma, two sections, each to include their improvements, and to be bounded by sectional lines, and the same may be disposed of and sold with the consent of the President. And that others not provided for, may be provided for, there shall be reserved as follows:

Heads of families.

First. One section to each head of a family not exceeding Forty in number, who during the present year, may have had in actual cultivation, with a dwelling house thereon fifty acres or more. Secondly, three quarter sections after the manner aforesaid to each head of a family not exceeding four hundred and sixty, as shall have cultivated thirty acres and less than fifty, to be bounded by quarter section lines of survey, and to be contiguous and adjoining.

Third: One half section as aforesaid to those who shall have cultivated from twenty to thirty acres the number not to exceed four hundred. Fourth; a quarter section as aforesaid to such as shall have cultivated from twelve to twenty acres, the number not to exceed three hundred and fifty, and one half that quantity to such as shall have cultivated from two to twelve acres, the number also not to exceed three hundred and fifty persons. Each of said class of cases shall be subject to the limitations contained in the first class, and shall be so located as to include that part of the improvement which contains the dwelling house. If a greater number shall be found to be entitled to reservations under the several classes of this article, than is stipulated for under the limitation prescribed, then and in that case the Chiefs separately or together shall determine the persons who shall be excluded in the respective districts.

Captains.

Fifth: Any Captain the number not exceeding ninety persons, who under the provisions of this article shall receive less than a section, he shall be entitled, to an additional quantity of half a section adjoining to his other reservation. The several reservations secured under this article, may be sold with the consent of the President of the U. S. but should any prefer it, or omit to take a reservation for the quantity he may be entitled to, the U. S. will on his removing pay fifty cents an acre, after reaching their new homes, provided that before the first of January next they shall adduce to the Agent, or some other authorized person to be appointed, proof of his claim and the quantity of it. Sixth; likewise children of the Choctaw Nation residing in the Nation, who have neither father nor mother a list of which, with satisfactory proof of Parentage and orphanage being filed with Agent in six months to be forwarded to the War Department, shall be entitled to a quarter section of Land, to be located under the direction of the President, and with his consent the same may be sold and the proceeds applied to some beneficial purpose for the benefit of said orphans.

Orphans.

Stipulations by United States for the benefit of the Choctaws.

ARTICLE XX. The U. S. agree and stipulate as follows, that for the benefit and advantage of the Choctaw people, and to improve their condition, their shall be educated under the direction of the President and at the expense of the U. S. forty Choctaw youths for twenty years. This number shall be kept at school, and as they finish their education others, to supply their places shall be received for the period stated. The U. S. agree also to erect a Council House for the Nation at some convenient central point, after their people shall be settled; and a House for each Chief, also a Church for each of the three Districts, to be used also as school houses, until the Nation may conclude to build others; and for these purposes ten thousand dollars shall be appropriated; also fifty thousand dollars (viz.) twenty-five hundred dollars annually shall be given for the support of three teachers of schools for twenty years. Likewise there shall be furnished to the Nation, three Blacksmiths one for each district for sixteen years, and a qualified Mill Wright for five years; Also there shall be furnished the following articles, twenty-one hundred blankets, to each warrior who emigrates a rifle, moulds, wipers and ammunition. One thousand axes, ploughs, hoes, wheels and cards each; and four hundred looms. There shall also be furnished, one ton of iron and two hundred weight of steel annually to each District for sixteen years.

Annuity to certain old warriors.

ARTICLE XXI. A few Choctaw Warriors yet survive who marched and fought in the army with General Wayne, the whole number stated not to exceed twenty.

These it is agreed shall hereafter, while they live, receive twenty-five dollars a year; a list of them to be early as practicable, and within six months, made out, and presented to the Agent, to be forwarded to the War Department.

Delegate to Congress.

ARTICLE XXII. The Chiefs of the Choctaws who have suggested that their people are in a state of rapid advancement in education and refinement, and have expressed a solicitude that they might have the privilege of a Delegate on the floor of the House of Representatives extended to them. The Commissioners do not feel that they can under a treaty stipulation accede to the request, but at their desire, present it in the Treaty, that Congress may consider of, and decide the application.

Done, and signed, and executed by the commissioners of the United States, and the chiefs, captains, and head men of the Choctaw nation, at Dancing Rabbit creek, this 27th day of September, eighteen and thirty.

Jno. H. Eaton, [L. S.]
Jno. Coffee, [L. S.]
Greenwood Leflore, [L. S.]
Musholatubbee, his x mark, [L. S.]
Nittucachee, his x mark, [L. S.]
Holarterhoomah, his x mark, [L. S.]
Hopiaunchahubbee, his x mark, [L. S.]
Zishomingo, his x mark, [L. S.]
Captainthalke, his x mark, [L. S.]
James Shield, his x mark, [L. S.]
Pistiyubbee, his x mark, [L. S.]
Yobalarunehahubbee, his x mark, [L. S.]
Holubbee, his x mark, [L. S.]
Robert Cole, his x mark, [L. S.]
Mokelareharhopin, his x mark, [L. S.]
Lewis Perry, his x mark, [L. S.]
Artonamarstubbe, his x mark, [L. S.]
Hopeatubbee, his x mark, [L. S.]
Hoshahoomah, his x mark, [L. S.]
Chuallahoomah, his x mark, [L. S.]
Joseph Kincaide, his x mark, [L. S.]
Eyarhocuttubbee, his x mark, [L. S.]

Iyacherhopia, his x mark, [L. S.]
Offahoomah, his x mark, [L. S.]
Archalater, his x mark, [L. S.]
Onnahubbee, his x mark, [L. S.]
Pisinhocuttubbee, his x mark, [L. S.]
Tullarhacher, his x mark, [L. S.]
Little leader, his x mark, [L. S.]
Maanhutter, his x mark, [L. S.]
Cowehoomah, his x mark, [L. S.]
Tillamoer, his x mark, [L. S.]
Imnullacha, his x mark, [L. S.]
Artopilachubbee, his x mark, [L. S.]
Shupherunchahubbee, his x mark, [L. S.]
Nitterhoomah, his x mark, [L. S.]
Oaklaryubbee, his x mark, [L. S.]
Pukumna, his x mark, [L. S.]
Arpalar, his x mark, [L. S.]
Holber, his x mark, [L. S.]
Hoparmingo, his x mark, [L. S.]
Isparhoomah, his x mark, [L. S.]
Tieberhoomah, his x mark, [L. S.]
Tishoholarter, his x mark, [L. S.]
Mahayarchubbee, his x mark, [L. S.]
Artooklubbetushpar, his x mark, [L. S.]
Metubbee, his x mark, [L. S.]
Arsarkatubbee, his x mark, [L. S.]
Issaterhoomah, his x mark, [L. S.]
Chohtahmatahah, his x mark, [L. S.]
Tunnuppashubbee, his x mark, [L. S.]
Okocharyer, his x mark, [L. S.]
Hoshhopia, his x mark, [L. S.]
Warsharshahopia, his x mark, [L. S.]
Maarshunchahubbee, his x mark, [L. S.]
Misharyubbee, his x mark, [L. S.]
Daniel McCurtain, his x mark, [L. S.]
Tushkerharcho, his x mark, [L. S.]
Hoktoontubbee, his x mark, [L. S.]
Nuknacrahookmarhee, his x mark, [L. S.]
Mingo hoomah, his x mark, [L. S.]
James Karnes, his x mark, [L. S.]
Tishohakubbee, his x mark, [L. S.]
Narlanalar, his x mark, [L. S.]
Pennasha, his x mark, [L. S.]
Inharyarker, his x mark, [L. S.]
Mottubbee, his x mark, [L. S.]
Narharyubbee, his x mark, [L. S.]
Ishmaryubbee, his x mark, [L. S.]
James McKing, [L. S.]
Lewis Wilson, his x mark, [L. S.]
Istonarkerharcho, his x mark, [L. S.]
Hohinshamartarher, his x mark, [L. S.]
Kinsulachubbee, his x mark, [L. S.]
Emarhinstubbee, his x mark, [L. S.]
Gysalndalra, bm, his x mark, [L. S.]
Thomas Wall, [L. S.]
Sam. S. Worcester, [L. S.]
Arlartar, his x mark, [L. S.]
Nittahubbee, his x mark, [L. S.]
Tishonouan, his x mark, [L. S.]
Warsharchahoomah, his x mark, [L. S.]
Isaac James, his x mark, [L. S.]
Hopiaintushker, his x mark, [L. S.]
Aryoshkermer, his x mark, [L. S.]
Shemotar, his x mark, [L. S.]
Hopiaisketina, his x mark, [L. S.]
Thomas Leflore, his x mark, [L. S.]
Arnokechatubbee, his x mark, [L. S.]
Shokoperlukna, his x mark, [L. S.]
Posherhoomah, his x mark, [L. S.]
Robert Folsom, his x mark, [L. S.]
Arharyotubbee, his x mark, [L. S.]
Kushonolarter, his x mark, [L. S.]
James Vaughan, his x mark, [L. S.]
Phiplip, his x mark, [L. S.]
Meshameye, his x mark, [L. S.]
Ishteheka, his x mark, [L. S.]

Heshohomme, his x mark, [L. S.]
John McKolbery, his x mark, [L. S.]
Benjm. James, his x mark, [L. S.]
Tikbachahambe, his x mark, [L. S.]
Aholiktube, his x mark, [L. S.]
Walking Wolf, his x mark, [L. S.]
John Waide, his x mark, [L. S.]
Big Axe, his x mark, [L. S.]
Bob, his x mark, [L. S.]
Tushkochaubbee, his x mark, [L. S.]
Ittabe, his x mark, [L. S.]
Tishowakayo, his x mark, [L. S.]
Folehommo, his x mark, [L. S.]
John Garland, his x mark, [L. S.]
Koshona, his x mark, [L. S.]
Ishleyohamube, his x mark, [L. S.]
Jacob Folsom, [L. S.]
William Foster, [L. S.]
Ontioerharcho, his x mark, [L. S.]
Hugh A. Foster, [L. S.]
Pierre Juzan, [L. S.]
Jno. Pitchlynn, jr., [L. S.]
David Folsom, [L. S.]
Sholohommastube, his x mark, [L. S.]
Tesho, his x mark, [L. S.]
Lauwechubee, his x mark, [L. S.]
Hoshehammo, his x mark, [L. S.]
Ofenowo, his x mark, [L. S.]
Ahekoche, his x mark, [L. S.]
Kaloshoube, his x mark, [L. S.]
Atoko, his x mark, [L. S.]
Ishtemeleche, his x mark, [L. S.]
Emthtohabe, his x mark, [L. S.]
Silas D. Fisher, his x mark, [L. S.]
Isaac Folsom, his x mark, [L. S.]
Hekatube, his x mark, [L. S.]
Hakseche, his x mark, [L. S.]
Jerry Carney, his x mark, [L. S.]
John Washington, his x mark, [L. S.]
Panshastubbee, his x mark, [L. S.]
P. P. Pitchlynn, his x mark, [L. S.]
Joel H. Nail, his x mark, [L. S.]
Hopia Stonakey, his x mark, [L. S.]
Kocohomma, his x mark, [L. S.]
William Wade, his x mark, [L. S.]
Panshstickubbee, his x mark, [L. S.]
Holittankchahubbee, his x mark, [L. S.]
Oklanowa, his x mark, [L. S.]
Neto, his x mark, [L. S.]
James Fletcher, his x mark, [L. S.]
Silas D. Pitchlynn, [L. S.]
William Trahorn, his x mark, [L. S.]
Toshkahemmitto, his x mark, [L. S.]
Tethetayo, his x mark, [L. S.]
Emokloshahopie, his x mark, [L. S.]
Tishoimita, his x mark, [L. S.]
Thomas W. Foster, his x mark, [L. S.]
Zadoc Brashears, his x mark, [L. S.]
Levi Perkins, his x mark, [L. S.]
Isaac Perry, his x mark, [L. S.]
Ishlonocka Hoomah, his x mark, [L. S.]
Hiram King, his x mark, [L. S.]
Ogla Enlah, his x mark, [L. S.]
Nultlahtubbee, his x mark, [L. S.]
Tuska Hollattuh, his x mark, [L. S.]
Kothoantchahubbee, his x mark, [L. S.]
Eyarpulubbee, his x mark, [L. S.]
Okentahubbe, his x mark, [L. S.]
Living War Club, his x mark, [L. S.]
John Jones, his x mark, [L. S.]
Charles Jones, his x mark, [L. S.]
Isaac Jones, his x mark, [L. S.]
Hocklucha, his x mark, [L. S.]
Muscogee, his x mark, [L. S.]
Eden Nelson, his x mark, [L. S.]

be it further enacted, That it shall not be
ident and Directors of said Branch Bank, to
s by discounting or issuing any notes or
the capital stock of said Branch Bank shal
in its vaults [illegible]
And be it further enacted, That the total amoun
said corporation shall at any time owe, whether
of contract, shall not exceed twice the amoun
pita and above the moneys then actually deposite
for safe keeping, unless the contracting of any greater d
have been previously authorised by a law of this State;
Directors under whose administration
happen, shall be liable for the same in their private cap
and an action of debt may, in such case, be brought aga
or any of them, their or any of their heirs, executors or
in any Court of this State having jurisdiction, by
of said corporation, and may be prosecuted to judgme
executed, any condition, covenant, and agreement to
notwithstanding; but this shall not be construed to
said Bank, or the lands, tenements, goods or chattels of
of their insufficiency, the State of Alabama, from
being chargeable with, the said exce
Directors who may have been absent when s
contracted or created, or who may have dissented fro
by which the same was contracted or create
exonerate themselves from being individual
If present, their dissent on the books of t
time the debt may be so contracted, and forthwi
the same to the Comptroller of the State.
And be it further enacted, That the credit of the Sta
is hereby pledged for the ultimate redemption a
of all notes issued and all debts contracted by sa
Bank.
And be it further enacted, That the remedy for co
shall be reciprocal, for and against the said Branc
[illegible]
further enacted, That the Governor, Comp
of the State, and President of the Ba
Alabama, be, and they are hereby authorized an
certificates of State stock, to an amount n
hundred thousand dollars, to bear interest not e
centum per annum, payable semi-annually at th
of Alabama, or at such other place as may b
redeemable at the expiration of twenty years, or a
that the State may choose, and sell said stoc
provided the same can be disposed of at par; and the
be realised shall be applied to, and shall compose the capi
the said Branch of the Bank of the State of Alabama.
c. 17. *And be it further enacted*, That to secure the regu
punctual payments of the interest semi-annually, and the

imate redemption of said stock, all the revenue of the State
ccept the University fund, the three per cent. fund, and the fund
sing from the sale of the sixteenth sections) shall be, and the
me is hereby pledged; and in case of a deficiency, the faith of
e State is hereby solemnly pledged to provide such additional
eans as may be necessary.

Approved, January 21, 1832.

AN ACT

o extend the Jurisdiction of the State of Alabama over the Territory according to the Geographical Boundaries within the Limits of said State, and for other Purposes.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama in General Assembly convened*, That the civil and criminal jurisdiction of the State of Alabama e, and the same is hereby extended over all the Indian territory within the State of Alabama.

Roads, bridges, and Ferries established.

Sec. 2. *And be it further enacted*, That the commissioners' ourts of revenue and roads of any county in this State where Indians inhabit any portion of the territory, be, and they are hereby uthorized to cause all such roads, bridges and ferries to be established within the territory upon which the Indians may live, s they may think the public good requires.

Exempt from certain duties.

Sec. 3. *And be it further enacted*, That this act shall not be o construed as to compel Indians to muster, or perform any other ilitary duty, to work on roads, or serve on juries; neither shall any thing in this act be so construed as to authorise the assessment or collection of any tax whatever, from any Indian or person f mixed blood descended of Indians, residing within the limits of he territory claimed by any of the Indian tribes within the chartered limits of this State.

Certain privileges granted.

Sec. 4. *And be it further enacted*, That all Indians or persons of mixed blood descended of Indians, within the limits of the State of Alabama, may, within the county of their residence, have all the privileges of perpetuating testimony, recording wills and bills of sale and conveyances, with the testimony of such persons beforementioned, as white persons have in their respective counties with white testimony.

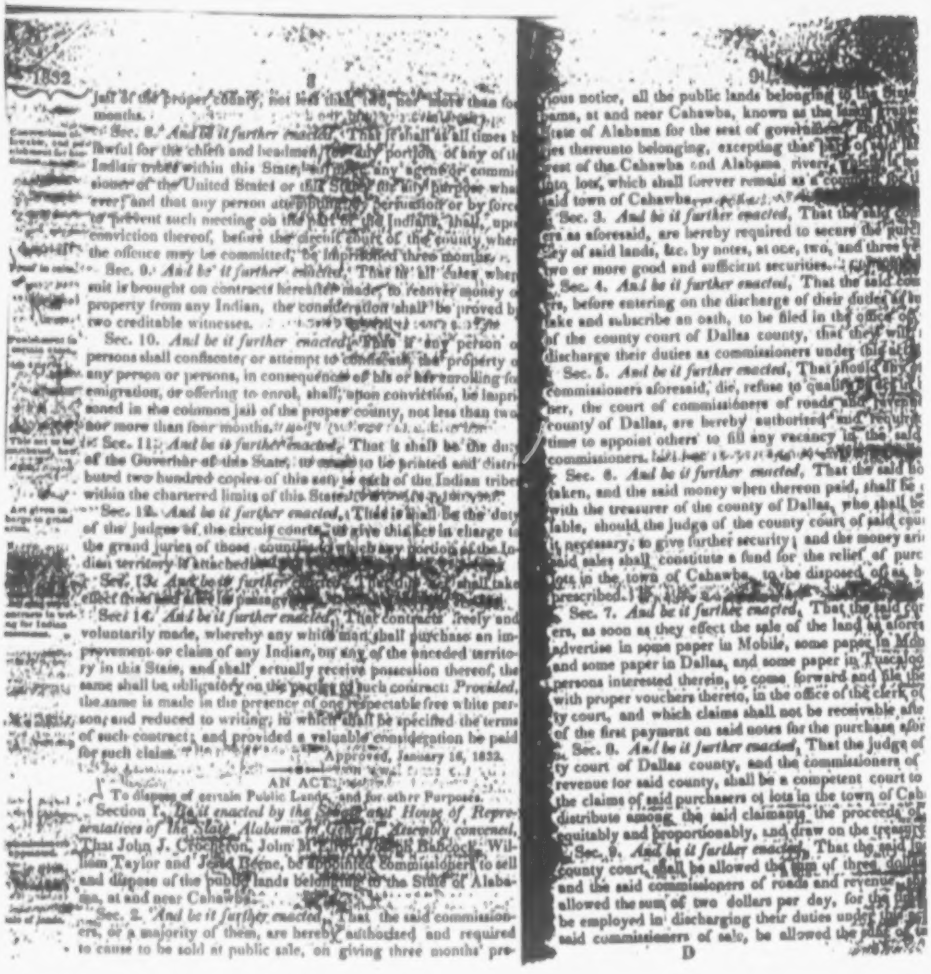
White persons living in Indian territory, how governed.

Sec. 5. *And be it further enacted*, That all white persons living within any portion of the country claimed by Indians, and attached to any county in the State, shall be in all respects governed by the same laws now in force for the government of the whites.

Indian customs abolished.

Sec. 6. *And be it further enacted*, That all laws, usages and customs now used, enjoyed or practised, by the Creek and Cherokee nations of Indians, within the limits of this State, contrary to the constitution and laws of this State, be, and the same are hereby abolished.

Sec. 7. *And be it further enacted*, That if any Indian or Indians shall meet in any counsel, assembly, or convention, and there make any law for said tribe, contrary to the laws and constitution of this State, shall, upon conviction, be imprisoned in the common



jail of the proper county, not less than two, nor more than fo months.

Sec. 8. *And be it further enacted,* That it shall at all times b lawful for the chiefs and headmen, [illegible] portion of any of th Indian tribes within this State, [illegible] any agent or commi sioner of the United States or this State, for any purpose wha ever; and that any person attempting, [illegible] persuasion or by forc to prevent such meeting on the part of the Indians, shall, upo conviction thereof, before the circuit court of the county wher the offence may be committed, be imprisoned three months.

Sec. 9. *And be it further enacted,* That in all cases whe suit is brought on contracts hereafter made, to recover money o property from any Indian, the consideration shall be proved b two creditable witnesses.

Sec. 10. *And be it further enacted,* That if any person o persons shall confiscate, or attempt to confiscate, the property o any person or persons, in consequence of his or her enrolling fo emigration, or offering to enrol, shall, upon conviction, be imprisoned in the common jail of the proper county, not less than two nor more than four months.

Sec. 11. *And be it further enacted,* That it shall be the du of the Governor of this State, to cause to be printed and distributed two hundred copies of this act, to each of the Indian tribe within the chartered limits of this State.

Act given in charge to grand juries.

Sec. 12. *And be it further enacted,* That it shall be the dut of the judges of the circuit courts, to give this act in charge t the grand juries of those counties to which any portion of the Indian territory is attached. [illegible]

Sec. 13. *And be it further* [illegible] shall take effect from and after its passage. [illegible]

Sec. 14. *And be it further enacted,* That contracts freely and voluntarily made, whereby any white man shall purchase an improvement or claim of any Indian, in any of the unceded territory in this State, and shall actually receive possession thereof, the same shall be obligatory on the parties to such contract: *Provided,* the same is made in the presence of one respectable free white person, and reduced to writing, in which shall be specified the terms of such contract; and provided a valuable consideration be paid for such claim.

Approved, *January* 16, 1832.

AN ACT

To dispose of certain Public Lands, and for other Purposes.

Commissioners appointed.

Section 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama in General Assembly convened,* That John J. Crocheron, John M[illegible], [illegible] Babcock, William Taylor and Jesse Beene, be appointed commissioners to sell and dispose of the public lands belonging to the State of Alabama, at and near Cahawba.

Sec. 2. *And be it further enacted,* That the said commissioners, or a majority of them, are hereby authorised and required to cause to be sold at public sale, on giving three months' pre-

ous notice, all the public lands belonging [illegible] bama, at and near Cahawba, known as the lands [illegible] State of Alabama for the seat of government, [illegible] ges thereunto belonging, excepting that part of said [illegible] west of the Cahawba and Alabama rivers, [illegible] into lots, which shall forever remain as a common [illegible] said town of Cahawba.

Sec. 3. *And be it further enacted,* That the said [illegible] ers as aforesaid, are hereby required to secure the purc ry of said lands, &c. by notes, at one, two, and three [illegible] wo or more good and sufficient securities.

Sec. 4. *And be it further enacted,* That the said com rs, before entering on the discharge of their duties [illegible] take and subscribe an oath, to be filed in the office of f the county court of Dallas county, that they will discharge their duties as commissioners under this [illegible]

Sec. 5. *And be it further enacted,* That should any [illegible] commissioners aforesaid, die, refuse to qualify [illegible] ner, the court of commissioners of roads and revenue county of Dallas, are hereby authorised and requir time to appoint others to fill any vacancy in the said commissioners.

Sec. 6. *And be it further enacted,* That the said bo taken, and the said money when thereon paid, shall be with the treasurer of the county of Dallas, who shall be lable, should the judge of the county court of said cou it necessary, to give further security; and the money ari said sales shall constitute a fund for the relief of purc lots in the town of Cahawba, to be disposed of as b prescribed.

Sec. 7. *And be it further enacted,* That the said co ers, as soon as they effect the sale of the land as afore advertise in some paper in Mobile, some paper in Mo and some paper in Dallas, and some paper in Tuscaloo persons interested therein, to come forward and file the with proper vouchers thereto, in the office of the clerk o ty court, and which claims shall not be receivable afte of the first payment on said notes for the purchase afor

Sec. 8. *And be it further enacted,* That the judge of ty court of Dallas county, and the commissioners of revenue for said county, shall be a competent court to the claims of said purchasers of lots in the town of Cah distribute among the said claimants the proceeds of equitably and proportionably, and draw on the treasur

Sec. 9. *And be it further enacted,* That the said ju county court, shall be allowed the sum of three dolla and the said commissioners of roads and revenue [illegible] allowed the sum of two dollars per day, for the [illegible] be employed in discharging their duties under this [illegible] said commissioners of sale, be allowed the [illegible]

D

OFFICE OF THE ATTORNEY GENERAL

CHARLES A. GRADDICK
ATTORNEY GENERAL
STATE OF ALABAMA

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DEPUTY ATTORNEY GENERAL

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DEC 11 1981

AL. INDIAN AFFAIRS COMM
MONTGOMERY OFFICE

DEC 10 1981

Ms. Jennie Lee Dees
Executive Director
Alabama Indian Affairs Commission
Suite 211 Perry Hill Office Park
Montgomery, AL 36109

Indians - Indian Tribes -
Indian Affairs Commission

Acts 79-343 and 79-228 give the
Mowah Band of Indians state
recognition.

Dear Ms. Dees:

You have requested the opinion of this office in regard to the validity of the status of the Mowah Band of Choctaw Indians in Mobile and Washington counties. In particular your question is whether this Band qualifies as a tribe and therefore may receive federal grant money.

According to §41-9-703(c) of the Alabama Code "Recognition of Indians shall be at the discretion of the Southwest Alabama Indian Affairs Commission." This Commission adopted regulations providing for legal recognition of Indian tribes, groups and organizations on April 10, 1980. However, before these regulations were passed the state of Alabama still had the authority to recognize individual tribes as shown through Local Acts No. 79-343 and 79-228. These acts repeal "all laws or parts of laws conflicting with this Act in regard to Mobile and Washington counties."

It is the opinion of this office that the Mowah Band of Choctaw Indians has been recognized by the State of Alabama by virtue of two 1979 Local Acts (numbers 79-454 and 79-228). and that a letter of certification may be issued to this effect.

Yours very truly,

CHARLES A. GRADDICK
Attorney General
By:
Michael M. Eley
MICHAEL M. ELEY
Assistant Attorney General

CAG/MME/pm

NARF Legal Review
Native American Rights Fund

Federal Recognition - A Historical Twist of Fate

by Faith Roessel

The Wampanoag Tribal Council of Gay Head, Massachusetts, after 200 years finally became formally acknowledged as an "Indian tribe" in 1987 - an identity they themselves never questioned. Long foreclosed from this distinct governmental status, it now brings to them all the rights, privileges, and protections accorded every other "recognized" Indian tribe in the United States.

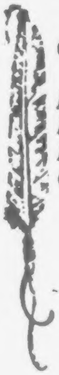
The Gay Head tribe is not alone. The American Indian Policy Review Commission (AIPRC) in 1977 identified 133 nonrecognized Indian communities in the United States. The Report further documented that of these, 23 were land owners, although the land was not necessarily protected by the federal government. At least 37 communities were found to have had formal treaty relationships predating the United States and at least 29 communities have treaty rights that were either confirmed by the United States or were negotiated directly between the historic tribe and the United States. The AIPRC also found the Bureau of Indian Affairs (BIA) had designated 25 of these 133 Indian communities as Indian tribes. So what went wrong? Why weren't these Indian communities ever recognized?

The answer lies in our history books and in making sense of our federal Indian policy. Kirke Kickingbird and Karen Ducheneaux, authors of *One Hundred Million Acres, (1978)*, aptly titled a chapter on non-recognized Indian communities as "Those Whom Even Time Forgot." In this chapter, the authors pose the question, "But what of the tribes so small, so peaceful, or so isolated that they posed no threat to white settlement? In most cases, they were simply forgotten."

The authors detailed several examples of Indian communities who escaped recognition but who qualify as dependent Indian communities.

> **They are people who should have the same rights as other Indian tribes. But they are people who were never powerful militarily and thus able to force the United States to deal with them by Treaty. Consequently, there was no need to recognize them or to move them to Oklahoma. It may seem strange to realize that Indian legal rights depend upon the ease with which the United States can abuse Indian communitities but such appears to be the case.**

Whereas most tribes gained their recognized status through war and treaty, and



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by lands set aside for them, many by a historical twist of fate were denied federal recognition. These excluded tribes continue to exist, but have been administratively denied benefits because they are "non-federally recognized" tribes.

This article will define the nature of federal recognition and describe the history and present administrative requirements to become federally acknowledged. Because the United States Senate has pending before it two federal acknowledgment bills, these will be discussed, as well as the respective positions of the proponents and opponents of such measures. In conclusion, the article will explore who benefits from federal recognition and whether federal recognition contributes to Indian law and policy.

Congressional Recognition and Administrative Acknowledgment

In 1975 a unanimous federal court elucidated an astounding principle on behalf of a NARF client. The court held that even though the Passamaquoddy Tribe of Maine had never entered into a treaty with the United States, and the Congress had never specifically mentioned the Passamaquoddy, the federal government has a trust relationship based on the federal Nonintercourse act with "any tribe of Indians," including the Passamaquoddy. *Joint Tribal Council of Passamaquoddy Tribe v. Morton.*, *(1975)*. This holding went directly against the Department of Interior's position that predicated the trust relationship as only owed to "recognized" tribes.

Passamaquoddy sets forth the legal principle that Congress in 1790 by enacting the Nonintercourse act had *generally* recognized and assumed a trust responsibilty to *all* Indian tribes. *Specific* acts of recognition, however, through treaty, executive order or acts of Congress, conceivably could later take place and did between particular tribes and the United States.

Within this context of general and specific recognition, questions continued to arise over whether an Indian group still existed as an Indian tribe to be accorded the trust relationship. In the absence of specific congressional guidelines, the Department of the Interior derived its own standards to determine whether specific Indian groups still maintained a tribal identity.

*In the course of this evolution, the Solicitor's Office of the Department of the Interior distinguished between "recognition," a prerogative of Congress and "acknowledgment," a secretarial designation that a government-to-government relationship exists between the United States and a particular tribe. Accordingly, a tribe named in a treaty or receiving benefits from an act of Congress has been recognized, and acknowledging that status is an administrative, perhaps nondiscretionary act. The Department's 1978 regulations may have confused this distinction because it requires an elaborate anthropological showing but without any credence given to prior federal

actions that demonstrate specific recognition. Consequently, the Department still refuses to take into account prior federal acts when reviewing a petition for acknowledgment.

The concept of recognition remains a viable doctrine defined as a formal political decision to establish a government-to-government relationship between an Indian tribe and the United States. Recognition therefore is similar to the process which is found in international law. "A state is not required by international law to recognize an entity as a state or a regime as the government of a state, but this is a political question to be determined by the executive branch of the government." *45 AmJur 2d Section 15.* The President usually conferred recognition to Indian tribes and foreign governments, with the advice and consent of the Senate through the constitutional treaty making power. In 1871, the treaty period ended between the United States and Indian tribes. Thereafter, recognition was conferred by executive order, legislation, or by other means.

Since the end of the treaty period, whether to recognize an Indian tribe in the first place has been one for Congress to make and is wholly discretionary. In *U.S. v. Candelaria, (1926)*, the Supreme Court noted that Congress cannot arbitrarily call the pueblo an "Indian tribe," but "the questions whether, to what extent, and for what time they shall be recognized and dealt with as dependent tribes requiring the guardianship and protection of the United States are to be determined by Congress and not by the courts." *In United States v. John, (1978)* the Supreme Court confirmed the status of the Mississippi Choctaw and found that "Neither the fact that the Choctaws in Mississippi are merely a remnant of a larger group of Indians, long ago removed from Mississippi, nor the fact that federal supervision over them has not been continuous, destroys the federal power to deal with them."

Once recognition has been confirmed, this naturally leads to the question whether it may be lost or withdrawn. Charles Wilkinson, noted Indian law professor and author, argues that tribes have the "right to change." In *American Indians, Time, and the Law, (1987)*, Wilkinson states:

> The permanency of tribal existence, then, gives tribes and Congress a continuing option. Tribal existence, wholly independent of any federal action, is maintained as long as a tribe or subgroup has the will to maintain it. In turn, Congress retains authority to deal with the tribe in order to correct old mistakes. *Id. at 78.*

Presumably then, once a tribe has been recognized, it cannot lose that status based on federal neglect or on the possibility that the tribe has changed or evolved. Whether a tribe ceases its political relationship with the United States can only be determined by an express act of Congress. A period of federal Indian policy attempted to do just that through termination legislation. *Menominee v. United States, (1968).* Similarly, it follows that specific Congressional legislation would be needed to withdraw a tribe's recognition rather than bureaucratic maleficence.

Proof of Tribal Identity and Existence

In 1978, the Bureau of Indian Affairs (BIA) promulgated administrative procedures for establishing that an American Indian group exists as an Indian tribe, in large part, as a reaction to the eastern land claims and *U.S. v. Washington* litigation. *25 CFR Part 83.* The BIA was also succumbing to recommendations from the AIPRC which called for Congressional standards for recognition purposes. At the time, Senator James Abourezk, Chairman of the Senate Select Committee on Indian Affairs, had introduced S. 2375, in response to the AIPRC recommendation. This legislation relied on the "Cohen criteria" and allowed for a prima facie showing of recognition based on a treaty, act of Congress, or executive order, thereby shifting the burden of proof to the government. S. 2375 was never acted upon because the Administration assured Congress it had developed its own standards and procedures, leaving legislation an unnecessary duplication.

The 1978 regulations departed significantly from what had been prior Bureau practice. Between 1935 and 1974, the Bureau had been applying the "Cohen criteria" found in Felix Cohen's *Handbook of Federal Indian Law (1942 ed.)*. During this time the Bureau was determining tribal existence in order to ascertain eligibility for government services under the Indian Reorganization Act. Tribal existence questions under study by the Solicitor's office were evaluated under the following: (a) that the group has had treaty relations with the United States; (b) that the group has been denominated a tribe by act of Congress or executive order; (c) that the group has been treated as having collective rights in tribal lands or funds, even though not expressly designated a tribe; (d) that the group has been treated as a tribe or band by other Indian tribes; or (e) that the Indian group has exercised political authority over its members through a tribal council or other governmental forms. *Id. 271.*

A Solicitor's opinion was often employed utilizing at least one or more of the above to establish a group as a "tribe" or "band." Other factors that were considered, but not conclusive, were the "existence of special appropriation items for the group and the social solidarity of the group." *Correspondence from LaFollette Butler, Commissioner of Indian Affairs, to U.S. Senator Henry M. Jackson, June 7, 1974.* During the mid-1970's the Bureau maintained that it lacked the authority to "recognize" Indian tribes, but that it might "acknowledge the existence" of Indian tribes previously recognized under treaty or acts of Congress.

Remarkably, in this context, the 1978 regulations lacked any reference to treaties, acts of Congress, or executive orders as a means of prior federal recognition which would weigh in favor of proving tribal existence. Instead, the regulations took a socio-anthropological approach, but used the terminology of "acknowledgment" as conceived by the Solicitor's office.

The regulations, still in use and never modified, require a petitioner to meet seven criteria pursuant to 25 CFR 83.7. A petition must: (a) establish that a petitioning Indian group has been identified from historical times until the present on a substantially continuous basis as "American Indian" or "aboriginal;" (b) contain evidence that a substantial portion of the petitioning group inhabits a specific area or lives in an American Indian community with its members descendants of an Indian tribe which historically inhabited a specific area; (c) establish that a petitioning group has maintained tribal political influence or other authority over its members as an autonomous entity throughout history until the present; (d) provide the petitioning group's governing document, or in its absence, a description of membership criteria and governmental operations over its affairs and members; (e) provide a membership list consisting of members who are descended from a historical tribe or tribes; (f) establish that the petitioning group's members are not principally members of other North American

Indian tribes; and, (g) show that the petitioning group has not been subject to a termination statute.

The Assistant Secretary for Indian Affairs carries out the prescribed duties through the Branch of Acknowledgment and Research (BAR) within the Bureau of Indian Affairs. BAR staff conducts the review of all petitions. Each petition is reviewed by one team consisting of a historian, an anthropologist and a genealogist. Should there be any "obvious deficiencies or significant omissions" in the petition, staff are to notify and describe them to the petitioner. The petitioner may withdraw or respond to correct these deficiencies; no time limits are specified to do so. Petitions are evaluated on a "first come, first served basis," with priority given to the petition or letter of intent to petition with the earliest filing date with the BAR office.

A fully documented petition that has undergone an initial review and any responses to it may be ready for active consideration, but such a determination remains wholly within the discretion of the BAR staff. When a petition comes under active consideration therefore depends on a variety of factors. A petition ideally would have an early filing date, the obvious deficiency stage would have been relatively short or none at all, and the BAR staff would be able almost simultaneous with the readiness of the petition to immediately begin work on it. The ideal, however, escapes the practice.

Within one year after a petitioner has been notified that active consideration has begun, the proposed findings are published in the Federal Register, unless extended by an additional 180 days upon a showing of due cause to the petitioner. All deadlines under the regulations are unenforceable.

Once the proposed findings are published, any individual or organization may within 120 days rebut the findings by submitting its own factual, legal, and evidentiary documentation.

If BAR refuses to acknowledge the petitioning group, the only opportunity to contest the adverse finding is through the Secretary of the Interior asking the Assistant Secretary to reconsider his decision. Whether the Secretary will ask the Assistant Secretary to reconsider his decision in practice has been determined by the BAR staff themselves, since they ultimately receive the reconsideration request from the Secretary. A denied petition, therefore, goes back to the very persons who decided against tribal existence in the first place.

In the end, if a petitioner successfully makes it through the process, the regulations provide it will be eligible for services and benefits from the federal government available to other federally recognized tribes and will be able to maintain a government-to-government relationship with the United States. Funding for these new tribes comes under a separate account within the BIA.

"Lost and Found" Tribes

Included in the 1978 regulations was a provision directing the Secretary of the Interior to contact "all Indian groups known to the Department in the continental United States whose existence has not been previously acknowledged by the Department." *25 C.F.R. 83.6.* The American Indian Policy Review Commission list was specifically required to be included.

The BIA reports that about 114 Indian groups have indicated an interest to petition for acknowledgment under the regulations. Forty of the requests were on hand when the acknowledgment office started in 1978 with the remaining 74 requests received since then. In accordance with the regulations, 7 groups have been acknowledged and 12 have been denied. Congress, in the meantime, has continued to exercise its legislative authority by recognizing, restoring, or clarifying the status of 5 Indian groups since 1978.

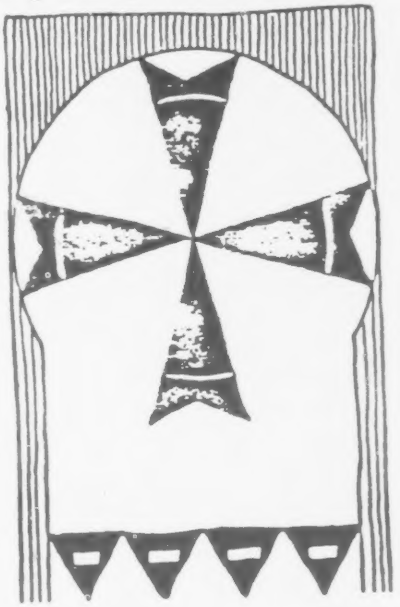
According to the Bureau's most recent statistics, April 1989, 28 fully documented petitions have been submitted and are at various stages of the petitioning process. Four of these petitions are listed as under active consideration, but that does not necessarily mean they are all being reviewed at the same time. BIA admits that only 1.5-2.0 petitions are being completed each year. Of the 28 completed petitions, 12 are awaiting some form of Bureau action, and 16 are awaiting petitioner responses to BAR's obvious deficiency letters. Furthermore, the Bureau documents that 35 additional groups are currently working on their petitions and 26 others are known to exist but who have not responded to the Bureau's inquiries. Given the current rate of 1.5-2.0 petitions being completed each year, the acknowledgment process will easily extend into the twenty-first century.

Petitioners are dependent on the Administration for Native Americans (ANA), which provides the only source of federal funding to assist nonrecognized communities in the preparation of their petitions. The BIA does not provide similiar assistance to a petitioning group. ANA status clarification grants began in 1981 with the purpose of supporting community applied research and assisting groups by linking them with those who would provide technical assistance. An ANA 1982 Issue Paper on Status Clarification explained ANA's mission as assisting these communities in overcoming the policies of nonrecognition and termination which stand as barriers to Indian social and economic self-sufficiency. Since 1981, ANA has funded 118 grants for status clarification purposes.

Recently, ANA commissioned a study to survey their status clarification recipients. Commonly known as the Orbis Report, outside researchers visited 35 Indian communities who reside in 15 states. The size of the 35 communities ranged from the smallest with 150 members (Jena Band of Choctaw, Louisiana) to the largest with over 30,000 members (Lumbee, North Carolina). Sixty-three percent (22 grantees) of these communities fell *below* the BIA's "small tribe" definition of 1,500 members. Twenty-eight percent (10 grantees) ranged between 1,501 and 5,000 members and close to nine percent (3 grantees) had memberships which exceeded 5,000 members.

ANA status clarification grants go toward providing two types of activities: 1) research and 2) tribal governmental reorganization or strengthening. NARF currently represents a number of grantees in their research which include historical, genealogical, ethnographic, and legal. The Orbis Report observed the arduous task of this type of research noting that since the "groups in question seldom have documented histories available, the researcher is forced to spend considerable time searching state and local archives, private collections, and obscure secondary sources for information. . . .This historical research component is long, tedious, and expensive."

Regarding the second activity of strengthening tribal governments, Orbis underscored the fact that "[a] strong government with sound and effective operational procedures in place should be the springboard for advancing a community to greater social and economic self-sufficiency.... Furthermore, tribes with developed management capabilities and experience can



clearly make a smoother transition once federal recognition is achieved."

The Orbis Report stated that the status clarification grants are achieving their goals. To date, 21 grantees have completed and submitted documented petitions to BAR. Only 11 have not, and 3 were ineligible to do so, because they had been named in a termination statute and would have to seek restoration legislation.

Overcoming Congressional Benign Neglect

Over the past twelve years the Senate has held three oversight hearings on the federal acknowledgment process, in 1980, 1983 and 1988. Following the 1988 hearing, Chairman Daniel K. Inouye urged witnesses to draft proposed legislation to respond to the ills testified to before the Senate Select Committee on Indian Affairs. NARF, at the Chairman's request, played a key role in assisting the Committee to develop legislation and in working with other organizations who took an interest in federal acknowledgment reform. Subsequently in March 1989, Senator Inouye introduced S. 611, the Indian Federal Acknowledgment Administrative Procedures Act. Twelve other Senators have joined in support and are co-sponsors of the bill. S. 611 represents the first comprehensive recognition bill to be introduced in the Senate, since Senator Abourezk's bill in 1977.

S. 611, rather than perpetuating the current acknowledgment system, attempts to correct the deficiencies by proposing solutions which are based on the experience of professionals who have been involved in the system since 1978. In approach, S. 611 distinguishes between two different types of petitioners; those who have been previously recognized and those who have not. For those who have been named in a treaty, executive order, or act of Congress, the petitioner need only show such a document; that the Indian group and its members are descendants from the historic tribe; and, that it has a current governing body. Once this prima facie showing has been made then the Indian group has demonstrated prior recognition and that status should be acknowledged. The federal government carries the burden of proving the Indian group no longer exists as an Indian tribe.

Those Indian groups who do not have evidence of prior federal recognition would petition through the more elaborate process analogous to the present system. Important improvements, however, have been made. Deadlines are built into the process to overcome the years of delays. A new enforcement mechanism is being proposed to create a right to mandamus action in federal court to enforce the deadlines. Expediency will also be promoted with additional definitions and thresholds of proof stated so petitioners will know when they have met a requirement.

Related to what constitutes sufficient proof, S. 611 sets up for the first time uniform standards to be applied equally to each petitioner. Precedent will prevail and with it conceivably less money expended because petitioners will know what to provide, and will not have to repeatedly respond to vague obvious deficiency letters. An appeal process in S. 611 adds a critical component long overlooked. Disagreements with the new Office of Federal Acknowledgment will be resolved by an independent three-person panel to be named anew in each case. Panel members will be selected on the basis of expertise in anthropology, history and by national reputation.

The new Office of Federal Acknowledgment will only handle federal acknowledgment petitions, compared to the BAR office which only expends 40 percent of its time on active status petitions. This exclusive focus to federal acknowledgment should increase efficiency and promote professionalism. To address possible conflicts of interest between the acknowledgment office and the BIA, the new office is set up independent of the BIA, but still within the Department of Interior.

Two days before the hearing on S. 611, Ranking Minority Member Senator John

McCain introduced his own federal acknowledgment counterpart, S. 912. S. 912 has been viewed as legislating the status quo, with a few changes. It maintains the current BAR office within the BIA. It utilizes the current criteria for petitions without operational definitions to assist social scientists. And, priority consideration goes to tribes who have been terminated.

S. 912 further provides that an Assistant Secretary's adverse decision may be appealed to the Office of Hearings and Appeals within the Department of Interior, rather than undergo expert review as in S. 611. If no action on a petition takes place within 6 years either by the Assistant Secretary or the Appeals Board, the petition will be treated as denied and may be appealed for de novo review in federal court. Although the bill is authorized for 12 years, a petition for recognition must be submitted within six years. The legislation uses the term "recognition" in place of acknowledgment. Whether Senator McCain intends to do away with the distinction or not remains unclear.

On May 5, 1989 the Committee heard testimony on S.611 from the Department of Interior, legal experts, historians, anthropologists, Indian tribes against and in support of the acknowledgment process, and Indian communities seeking acknowledgment. Tribal witnesses who testified against S. 611, interpreted S. 611 as weakening the criteria for federal acknowledgment to such an extent that anyone may qualify as an Indian tribe. As one tribal witness stated in his written testimony, "We see in S. 611 a threat to our sovereign powers. Its broad definitions and lax standards would eventually make a mockery of the very meaning of 'Indian tribe' and 'government-to-government' relationship.'"

Contrasted with that view, the majority of witnesses at the hearing focused on the problems with the system and the need to substantially improve it. Academic scholars in history and anthropology testified that the revised criteria are actually more difficult to meet than the current criteria and they supported the operational definitions to assist professionals in the field as to what proof is required and how much. Petitioning groups testified in support of S. 611 as a means to break the log jam at BAR where petitions have been languishing for years. At the end of the hearing, Senator Inouye asked the minority and the majority staff of the Committee to fashion a "compromise" bill that would meet the concerns of all involved. To date, a compromise has yet to be proposed other than drafts of possible approaches. The Committee anticipates a hearing on the compromise version once it has been introduced.

Conclusion

This article in a broad sweep has attempted to put in some historical, legal, and Congressional perspective the phenomenon of recognizing and acknowledging Indian communities that meet certain prescribed criteria. Over ten years ago, the American Indian Policy Review Commission in its task force report concluded that:

> The results of 'non-recognition' upon Indian communities and individuals has been devastating, and highly similar to the results of termination: the continued erosion of tribal lands, or the complete loss thereof; the deterioration of cohesive, effective tribal governments and social organizations; and the elimination of special federal services, through the continued denial of such services which the Indian communities in general appear to desperately need.

It is this community of Indian people that NARF has served and continues to serve. Tribal existence forms the core of any Indian community's ability to become independent and self-sufficient, and tribal existence is one of NARF's priority areas. Consequently, the legislative proposals before Congress are of paramount importance to our clients who are not as fortunate as the majority of Indian tribes designated as "recognized."

NARF has built an impressive track record in its tribal existence area. NARF's clients who have chosen to proceed through the acknowledgment process have each been successful. In every case in which legislative recognition or restoration has been the vehicle, again, NARF has never failed to achieve either goal.

The politics of "recognition" in Indian country cannot be overlooked. Even the AIPRC lamented about the "extremely controversial nature of 'recognition and non-recognition' in the socio-political arena of Indian affairs." Whereas nonrecognized Indian communities have faced almost insurmountable odds in their quest to become recognized, they now face even greater political odds to overcome the perception by some in Indian country that they are illegitimate and will further diminish already scarce resources. While no one can dispute the decrease in fiscal expenditure since 1980 for all domestic programs, including Indian programs, those who are concerned with a smaller pie need to remind themselves of the origins of the federal trust relationship. Rather than it being calculated by the Office of Management and Budget as an appropriation item, the trust relationship is based on the U.S. Constitution, treaties, statutes, and federal common law.

"Recognition" compels students of Indian law and policy to go back to the underlying precepts of the relationship between Indian tribes and the United States. Inquiries into the recognition issue may very well lead to the conclusion that since 1978 the Congress has abdicated its responsibility of recognizing Indian tribes and has left it to an administrative procedure that is carrying on with a life of its own, and now needs Congressional intervention.

"Recognition" also supports the concept that Indian law and tribal existence are not static concepts. The fact that Congress will continue to recognize or restore tribes, and even legislate to authorize the Interior Department to acknowledge tribes substantiates a continual trust relationship; not one dependent on or thwarted by fiscal policy.

We are further instructed that tribal existence and identity do not depend on "recognition." Once that equation is made, any tribe at some point may be in jeopardy of losing its identity by a mere slip of the federal pen. It has already happened to 33 Alaska Native villages who testified at the 1988 oversight hearing that they had been "inadvertently" de-recognized by the BIA. They have yet to have had their status resolved.

Perhaps the story of Chief Little Shell, a Chippewa leader helps us understand how the accidents of history are closely allied with recognition. Facing forced removal, Chief Little Shell refused to sign what he believed was an unscrupulous treaty. His descendants, now NARF clients, are petitioning the BAR for federal acknowledgment. They are asking, and rightfully so, does not the act of *refusing* to sign a treaty denote an act of a sovereign? The answer should be yes. The BAR will be faced with that question whenever they actively consider the Little Shell petition.

In sum, the benefits of "recognition" for those communities who have achieved that goal are immeasurable. What these Indian communities teach us is an exercise of tribal sovereignty in its purest form; sovereignty never reliant upon federal services nor subsidies.

Native American Rights Fund

The Native American Rights Fund is a nonprofit organization specializing in the protection of Indian rights. The priorities of NARF are (1) the preservation of tribal existence; 2) the protection of tribal natural resources; (3) the promotion of human rights; (4) the accountability of governments of Native Americans, and (5) the development of Indian law.

Our work on behalf of thousands of America's Indians throughout the country is supported in large part by your generous contributions. Your participation makes a big difference in our ability to continue to meet ever-increasing needs of impoverished Indian tribes, groups and individuals. The support needed to sustain our nationwide program requires your continued assistance. Requests for legal assistance, contributions, or other inquires regarding NARF's services may be addressed to NARF's main office: 1506 Broadway, Boulder, Colorado 80302. Telephone (303) 447-8760.

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PETER RIVERS, TRIBAL GENEALOGIST
PRESIDENT OF ALABAMA INDIAN ART COUNCIL

HISTORY OF CONTINUOUS SETTLEMENT OF SOUTH ALABAMA BY THE CHOCTAWS OF MOBILE AND WASHINGTON COUNTIES.

The Great Spirit created the Choctaw people on a high hill (Nana Chafa). In the South we emerged and lived in harmony with nature until the coming of the Europeans. The Europeans came in the 16th century with Desoto. Desoto gave a prophecy of what was to come, he kidnapped the great Alabama Choctaw, Tuscaloosa and murdered him after he was greeted with friendship and generosity by the great soveriegn chief.

The next contact between the Okla Hannili (Sixtowns) Choctaw of Alabama was when the French explorer Bienville and his brother D'Iberville settled what is now known as the City of Mobile in 1702. The Yowanni Choctaw of Alabama became the natural allies of the French and Spanish in the rivalry with the English and the Americans.

During this period in history the Yowanni Choctaw people of South Alabama came to work in harmony with the French countrymen. This area of Alabama was called the Mississippi Territory by the French and later by Americans. There were a series of treaties between the kings of Spain, Britain and France and the Okla Hannila Choctaw signed in the Indian Council house in the City of Mobile.

Treaties were signed between the United States and the Choctaw begining in 1778 and ending with the Dancing Rabbit Creek Treaty in 1831. This treaty almost seceded all the land East of the Mississippi except reservation land that was given to the Choctaw who chose to stay. These include the Choctaw in what is now known as South Alabama. The Mobile-Washington County Choctaws are the intended beneficiaries of this treaty.

The right to stay was granted to the Choctaw of the Mississippi Territory because Sixtowns had been the allies of the Americans. The Choctaw fought with Jackson in the Battle of New Orleans and against the Creeks at Horseshoe Bend in Alabama. The Yowanni Choctaw were guaranteed the right to homestead land, become citizens of the United States, and retain all of the rights and privileges as Choctaw Indians.

The State of Alabama created Indian Jim Crow laws. These laws gave Indians no right to testify in court. Our French relatives tried to plead for rights. But influx of immigrants from Ireland and Georgia onto Indian land and the creation of laws that deprived Yowanni Choctaw of their right to due process caused much hardship. Choctaws of Alabama became more and more isolated from the Choctaw of Oklahoma and Mississippi, even though there were contacts between the three groups. When the Civil War tragedy happened in the U.S. the Choctaw again were used in the politics of Anglo-Saxon Americans and fought on the side of the South. The Southern leaders again promised to restore our stolen lands which were now mostly owned by large Northern companies and to recognize our rights under the Dancing Rabbit Creek Treaty.

There were land disputes between the Federal government and the Yowanni Choctaw; but somehow these disputes were ignored by the Government and brushed aside. Many Indians were cheated out of land and of annuity payments promised by the U.S. Government, and many could not read and write at that time. During this period, known throughout history as the Trail of Tears, many Indian refugees from other tribes sought refuge among the Yowanni Choctaw. Some later moved on but many stayed and became what is known as the Choctaw community.

Before the Civil War, the Choctaw of South Alabama had relatively stabilized their lifestyle and property. The Choctaw Academy, founded by Chief Pierre Juzan, operated to provide rudimentary education for Choctaw Youth. Great leaders emerged to lead the Yowanni Choctaw during this very turbulent time. Animosity toward the Choctaw was still present, but many of the French relatives of the Choctaw were the civil leaders in the City of Mobile, and helped to mediate disputes between the newly arrived settlers and the beleaguered Indians.

Many Choctaw became prosperous property owners and were respected in the Indian and white communities. These individuals epitomized the strong continous cultural and political leadership that was present among the Choctaw Nation in Alabama.

Tragedy struck in the form of the War Between the States. The Yowanni Choctaw allied itself with the losing cause of the South. All of the prosperity enjoyed by the Choctaw community was destroyed by this terrible war. Many Choctaw youth were killed or maimed in this confrontation. The South's promise of their recognition of the Choctaw rights under Dancing Rabbit Creek went unfulfiled. Many Choctaw packed their few valuables and joined their relatives along the Texas-Oklahoma border.

Others, had neither the heart nor the desire to leave their beloved Alabama. Rather than leave Alabama, many moved to the more remote Choctaw Indian communities located in North Mobile and South Washington County.

During the Reconstruction period, segregation occurred accompanied by loss of property, and loss of constitutionally guaranteed rights. Because of the disenfranchisement of Confederate veterans many Choctaw lost the right to vote. Many northern bureaucrats confiscated Choctaw land for taxes that had been exempt under the Dancing Rabbit Creek Treaty of 1831.

As before, the Choctaw peoples' survival was only due to the leadership of our great chiefs. Racism reared its head. Indians were prohibited from attending schools with whites. And for a time in history, very little formal education could be acquired by Indian children. Again, the tradition of taxation among the Choctaw was used to acquire land, build roads construct buildings, and hire teachers to educate Choctaw youth.

Independence from all outside assistance continued until religious groups again became interested in saving Indian souls. During this period, there existed in Mobile and Washington County, Alabama, a tri-racial school system, the black and white systems were supported by the State and the Indian system was completely autonomous except for books and instruction provided by the missionaries. This tri-racial school system existed until the 1970s when the Federal government forcibly desegregated South Alabama schools.

The Yowanni Choctaw community was still very close knit and well-defined. Choctaw religion and medicine was still practiced, but missionaries attempted to replace everything tribal with something religious. The Choctaw elders, wanting to improve the ecomonic situation of their children, acquiesced to many of the demands of the rigid theocracy.

During these same years, 1880-1910, a second Indian Removal was taking place which affected the Choctaws. The Dawes Act, by which congress hoped to do away with reservations by dividing lands into individually allotted plots, became the basis for United States Indian policy for 1887 to 1934. Allotment was carried out among many western Indians, and enrollments were taken among remnant southeastern Indians.

The first enrollment affecting Choctaws was as act passed June 7, 1897. This act "made it the duty of the Dawes Commission to report to Congress whether or not the Mississippi Choctaws were entitled to citizenship privileges." The Commission then made an investigation and reported that to be eligible for enrollment it would be necessary for such Indians to take up a bona fide residence in the Choctaw Nation and establish their identity as the descendants of those who had elected to take allotments under the Treaty of Dancing Rabbit Creek. Identification would normally have been established by showing that a request for allotment had been made under the Treaty of Dancing Rabbit Creek, but since Agent Ward had been intemperate, incompetent, as well as abusive to the Choctaws he had kept no proper record of these requests. The Dawes Commission therefore assumed that the Choctaws living in Mississippi were the descendants of those who would have made a declaration of their intention to remain if they had been given fair treatment, and that no further identification was necessary. Since this interpretation would have made every person of Choctaw descent in the area eligible to citizenship, the Supplementary Agreement provided that it sould apply only to full bloods, and that mixed bloods must prove that their ancestors had made applications for allotment under the Treaty of Dancing Rabbit Creek. The Supplementary Agreement also stipulated that persons identified as Mississippi Choctaws should not be eligible for enrollment unless they should remove to the Choctaw-Chickasaw country, and that they should receive allotments only after three years' residence. More than six thousand applications were received by the Dawes Commission during 1901 and 1902 by persons who claimed to be Mississippi Choctaws. Major efforts were made in 1903 by lawyers and land speculators to remove the Choctaws to take advantage of these allotments.

It is doubtful if this second removal would have been pursued on a large scale without strong persuasion from whites because the Choctaws were illiterate and did not fully understand what was required. Many of the Choctaws who went to Oklahoma did not receive land, or were cheated of the land they received, and filtered back to Alabama and Mississippi. Several ancestors of Choctaws made application for the Mississippi Choctaw Roll. Some were identified, while others were unable to sufficiently prove their Choctaw ancestry. Many would not sign up for fear of being sent away.

During the twenties, and with the Great Depression land that had been acquired, by the Choctaw people was lost. White landowners and companies usurped large tracts of land owned by the Choctaw people. This poverty continued until War World II. Many Indians were expert loggers and used these skills to assist the Choctaw people. During this time the first children were sent to colleges in Oklahoma and Texas. Many of the present day leaders of the Choctaw were educated at Bacone Indian College in Muskogee, Oklahoma, and Methodist schools in Texas. Some of the individuals returned in the middle to late fifties to educate their people.

During the 1950s and 1960s, there was a period of great prosperity in Mobile and Washington Counties. This prosperity did not include Indians. Large chemical and pulp plants provided jobs and economic opportunity for blacks and whites. Indians were not hired. Indian leaders continually lobbied Montgomery and Washington to help them with their situation. In 1966, the EEOC was successful in enforcing Olin Chemical Company to hire its first Indian.

The enactment of Civil Rights laws represented a turning point for the Choctaws of Alabama, offering significant choices not available to previous generations. Several authors who wrote about the Choctaws of Alabama in earlier periods speculated that if the color bar were ever dropped, the Choctaw Indian's identity, and indeed the tribe itself, would soon disappear. These predictions have proven to be absolutely wrong. To the contrary, the 1970s and 1980s proved to be a period during which expressions of Indian identity among the Choctaws have intensified rather than declined.

A Native American cultural program was begun in 1978 in Reed's Chapel and Calcedeaver schools (using federal Title IV-A Indian Education Funds). In the following year a new constitution was adopted which re-organized a tribal council. The Alabama legislature passed a law recognizing the Alabama Choctaws rights as an Indian Tribe. The governing structure of the Alabama Choctaw consists of five council members and fourteen commissioners, the latter evenly divided between the two counties. An elected chairman leads the council. Framon Weaver, the current chairman, is also a descendant of Choctaw Chief, Robert Cole.

The tribe maintains an office with a paid staff and full-time administrator, and provides a variety of services to tribal members located on the reservation property. An annual pow wow is held each year. The Mowa Choctaw Band reclaimed 211-acres of traditional Indian land near the boundary between Washington and Mobile Counties. This land, which includes the old sacred "Indian stomping ground," is the site of a rapidly growing tribal complex. Choctaw cattle once again graze in this area, part of a program to rebuild herds. A commercial catfish farm has been developed along with a truck farm, and horiticultural nursery. The State of Alabama has recently legalized alligator farming so the Choctaws of Alabama will have an alligator farm.

The recently acquired tribal land has been occupied by the Choctaws at least since the 1800s, when Robert Cole, Lem Byrd, and Dave Weaver moved their families onto the Level. When the tribal council obtained their title, the former owner duly apprised them that there were "squatters" living on the land. The so-called squatters were in fact descendants of the original families who settled this area, and were well known members of the tribe. Reclaiming this land had religious as well as economic significance. After more than 300 years of continuous occupation, despite repeated efforts to disposess them, the tribe has now established a clear right to inhabit this area. Development of the property also offers a base upon which to build greater economic self-sufficiency and tribal control over resources that are valuable to the whole community. The history of these great people is far from over.

The ultimate goal of federal recognition is to be acknowledged as the descendants of those brave individuals who would not leave our beautiful land in Alabama under Treaty of Dancing Rabbit Creek. The tribe humbly but resolutely ask Indian as well as non-Indian to help their friends right this historical wrong and ask the Federal Government to abide by the Treaty obligations that the Senate of United States approved and the president signed more than 150 years ago. We pray that all those involved will do what is right and good so the Choctaw people will grow and prosper and not suffer the wrongs in the future as we have in the past. The Mobile Washington County Band of Choctaw Indians ask the Great Spirit, our God for guidence in these endeavors.

Interview with Leon Taylor
March 17, 1990

Peter: The first thing we want to address that this is the community. the two (inaudible) communities being the Byrd community and the Reed's Chapel community. And (inaudible) you start talking telling a little bit about how it was when you were growing up, about your mother and so on.

Leon: What kind of life we had?

Peter: Yes. sir.

Leon: It was a pretty hard life I'll tell you right now. Well, we was raised in Mobile County and we came up peacefully in Washington County. Then in later years after I married (inaudible) settled in in Washington County for the last 45 years. In my life time, and growing up as a Indian child, my daddy, he went to war, service in my younger days, and after he got out of the war he and my mother never did live together more, we seen a pretty hard life. I had to start working early, didn't have the privilege of getting an education like I hoped to give my kids and I fought real hard to try to educate them cause I didn't have the privilege to go on, I had to get out and try to help momma survive, me and the young ones (inaudible) and what little schooling I got, well you really couldn't count it cause...Now the white people and the black people all recognize us as Indians and anything and they didn't want to accept us in the white schools and the blacks wouldn't accept us and so they finally came up with a school, Shady Grove in Calvert, West Calvert. They named it West Calvert School. And then Ms. Murphy was the first one I remembered (inaudible) and they came in started teaching and what little learning I got I went there some when I was able to go. Then I came us here some to separate school and so on. I mean trying to get an education like that, in and out, in and out, you just couldn't succeed getting an education. And through my life history I seen what it was really important for people to have an education because other people does things (inaudible) education so I always regret not getting none but wasn't nothing I could do about it. But I always said if I ever married and had a family at all there was two things I wanted to do: I wanted to be a father for my kids and give them all the education that I possibly could see them get. So I thank the Lord, he has blessed me to that effect. All my kids have got pretty good education and I am proud of that.

As far as families, I've been knowing the families (inaudible), a lot of 'em is dead and gone, which they had a hard life, too. You know that of course. (inaudible) In my life time they seemed just about, you know, really worse than we did because in my life time coming up poor, really people (inaudible) for us along, by being unable to have our father with us helped us along (inaudible) and I appreciate that. It's something to be proud of.

As far as Indian is concerned, I never had any doubt in my mind because all of our people is Indian. I ain't never had any doubt in my mind about whatsoever about that. Cause, and then people around us, most of them they didn't want to accept us in. The white would go with the blacks. I have to say I reckon if I give any credit to anybody it would be the white race of people because they more friendly to Indian people than black society seems.

Peter: As far as helping?

Leon: Yea, right. As far as helping, missionary work, ya know, and doing about, and that wasn't an easy life.

Peter: What year was your father in war? World War I?

Leon: Yea, World War I. And then I came along in World War II.

Peter: So that was about 1914-15?

Leon: Yea.

Peter: When the war was over, did he get out?

Leon: No, he got out...I believe the war was over when he got out.

Peter: 1919

Leon: Yea.

Peter: Did they have anything like the GI Bill then? Do you know?

Leon: Who, him?

Peter: Yes, did they have a GI Bill?

Leon: No they didn't have a GI Bill. Them men go, say, what little refreshments I got on the schooling I went under the GI Bill.

Peter: Okay, that's World War II?

Leon: Yea, that's World War II. And they graded me as high as seventh grade learning and I mean...

Peter: The school, Shady Grove, does it go through the sixth, the twelth grade, or what?

Leon: Well, they, really they sixth grade, but now there was some of the students after they came down here to work, some of the students had gone to high school and then they sent them off. Some when to churches, and one to Texas and places like that to finish up. I don't know of about two or three...

Peter: Excuse me. (inaudible) what school (inaudible) along with you?

Leon: No, that was...yea, Calvert and I went to school some but now he didn't go to Shady Grove. Ms. Murphy was teaching out in the, what they call Weaver school out there and that's where Gallasneed Weaver built and developed it. It's what they call the Weaver School. Old man Coon Weaver started, I mean he was teaching down there. So Mrs. Rogers and Mrs. Byrd she taught Indian children. But know, Michael Byrd and Elizabeth Byrd they was the only two...

Peter: (inaudible)

Leon: Yea, yea he did. And (inaudible) Byrd she went on. And then from out there I thing Calvin and Hattie, they was sister and brothers.

Peter: (inaudible)

Leon: Michael Byrd (inaudible) brother, in fact the only brother she ever had. And then the baby girl, Peggy Byrd, ...

Peter: (inaudible)

Leon: Yeap, yeap. Right out there at....year, before they built the little school right out there, they used to go into a church - they had an old church...

Peter: On Red Fox Road?

Leon: Yes, right after you top that first hill leaving Calvert, out there to the left, there is a cemetary there...There is an acre of land... and we had to walk from down there in Calvert out there to the top of that hill, about 2-1/2 miles.

Peter: What year was that?

Leon: Oh, my goodness, it had to have been in the 40's.

Peter: Okay, what year were you born?

Leon: I was born in 1922.

Peter: So late 20's - early 30's.

Leon: Yea. It was in the 30's. Because I know that Ms. Rogers and Ms. Murphy (inaudible) 135 Fullwood Court. Rogers and Murphy.

Peter: Were they state supported or did they all pay by private fund?

Leon: No they, the county or the school board must have sponsored...

Peter: I know that they said earlier that before the state took over that the community was taxed. Each community paid a certain amount of money for education.

Gallasneed: ...per year...teachers quit because they got higher money (inaudible) that these people needed help too...and somebody else was teaching here for a while that was probably in the early 20's.

Peter: I've heard momma talk about how we burried the dead. One of the main things we want to ask of you is how did the early people care for the dead? How did they have wakes and things like that. Tell us a little bit about the superstitions and how they took care of things like this, and who was designated to handle the people that died.

Leon: Well, in my life time I'd have to say that we have come a long way. I've seen 'em, people get killed, some of our people get killed, wash 'em, dress 'em and lay 'em out on a cooler. I remember (inaudible) Sullivan was the first man I ever seen dressed and layed out on a cooler. The Chief would call all the people together and build a big fire outside and sit up all night with the body and the women would walk around the house (inaudible) a chant.

That's the first one I remember being layed out on a cooling board. Now after him when the ones that I remember were buried here was in homemade coffin. You know, there used to be a place down .... right, old man Clifford Reed, Wesley Johnson and Uncle (inaudible) and two or three others made

Old Mack Henry - I remember them making his. And I think Price's first wife, Minnie, they the last two that I remember was put away in a homemade coffin. They were very careful how they handled their dead.

Peter: And they would sit up all night...

Leon: Right, sit up all night and me and the way they got the news was, it wasn't like it is now. If someone is sick in the community you pretty well new them they would come to the church here and somebody passed in the community they would ring that bell for how ever many years you were old and then everybody know who you was and then news would get around (inaudible) stuff like that. It's a way of doing things. If anybody was sick they would go and set up with them at night and stuff like that, you always had....

Peter: They didn't go to hospitals much then.

Leon: No. Only herbal medicine...

Peter: They called the doctor?

Leon: Dr. Thompson checked my mother. I never remember my mother walking into a doctor's office in her life. She seen the doctor in my life time after I had a family. Old Dr. Thompson, he really is a good friend of the Indian people. If he could accommodate 'em he would. And I got him to go in an visit my mother. A couple of times I had to slip him in. She didn't believe in doctors. I never remember going to a doctor, or her carrying none of her children to the doctor in my life time. She always done the doctoring, you know, she had ways of doing things with herbs and stuff...

...we use these herbs and weeds you see here, we gather a few of them... boil 'em, make a good strong tea out of 'em and they would get a big strong bunch of it for a baby that was teething, (inaudible), pine straw...sassafras tea...yellow top, chukfi

Peter: One thing we want to talk about too, is more of Home Tac, who was a Choctaw Chief and who was the grandfather of Henry Eaton, who was your grandfather, which would make Home Tac your great, great, great grandfather. Could you tell us a little bit about Henry Eaton, what little bit you know about him.

Leon: What little bit I knew about him, was enough to remember, I'll tell you that. He was a kind of peculiar fellow. I was pretty small when he died, but my parents and friends and things would talk about him and it always (inaudible), stuff like that. But ... never let ... stuff like that...he was what you would call a medicine man, he was called a medicine man. He could do great miracles, I reckon, and I want to thank him, which people today they didn't think so but in our time, I guess it was a miracle, you know. And some folks trying to find out different things and he...and they go right on and sometimes it would work out just like he said. He lived on ... Hamilton ... in this country, I think, but I could name the (inaudible) you've got a place up here on high hill and they you got a place over here by, on Johnny Johnston Road, off from there, a little ways from...a Choctaw, Oscar Reed's place there, and I think they still call 'at the (inaudible) spring over there. He always trapped and he could get up and drink his coffee in the morning and he could tell you, he could look in that cup, he would drink his coffee and he set it down and let it dry a little bit, turn it upside down and he could tell you which trap had something in it and ...Now they tell that on him. I never did see that work but now, my momma and all the older heads tells that on him today. I don't know maybe if thats true.

Gallas: ...do you know what year it was? How old he was?

Leon: No I've been trying to find an exact date on it, but ....

Peter: We've got it in there. We've got the death certificate with the date he died.

Leon: Is that right.

Peter: He was 80 years old, if I'm not mistaken, ... it was 1935 I think it was.

Leon: Right. It would have had to been in there because they moved ... he died before Bernice. And I think shortly after Bernice taken sick with (inaudible) and they had to carry her to the hospital and she never recovered from the operation. I think he died just a little bit before Bernice died, that had to be in the 30s, I was always wanting to think that it was about '32 or 3 but it could have been in '35.

Chief Home Tac was his grandfather, Henry Eaton. He was the one that moved us on highhill many years ago.

Gallas: Did they operate in Mobile or...

Leon: Yes, in Mobile.

Peter: What was some of the special events that the community had, where people would come from like Mt. Vernon, Cherry Chapel, Simms Chapel and they would all get together at Reed's Chapel or some people from Reed's Chapel would go down there. What was some of the things that they would have to get people together in the community?

Leon: Well, they would have big church days, or what they would call the (inaudible) or something like that you know. They had names for, just like if somebody wanted to clean up a batch of new groun, or new field, or something like that they would call it log rolling or something like that. They would set a date and everybody would leave round, come from work and clean it up and stuff like that then you would have church and set a church day, and some of 'em would go down there.

Peter: What about the Treaty of Dancing Rabbit Creek.

Leon: We always have been able to stay because of the Dancing Rabbit. They tried to remove us but we would not go.

Peter: What kind of leadership did we have when you were a child?

Leon: We always had tribal leaders but we had a chief, someone who was chosen for his wisdom and ability to lead our people. Lem Byrd, (inaudible), Shomo Weaver, Luke Rivers these were our leaders.

Peter: What would you ask Congress to do?

Leon: Acknowledge our rights. Our children can't get trained to get jobs. We have high unemployment. I have done all I can do. I'm old and tired. We are Choctaw. (inaudible) Do the right thing. My father fought in World War I and I fought in World War II. My two sons fought in Vietnam. We have been loyal to the United States, they should be loyal to us. (inaudible)

My great, great grandfather has petitioned Congress, my great grandfather petitioned Congress, my grandfather petitioned Congress, my father petitioned Congress. Now, I, Leon Taylor, veteran of the United States Army petition Congress for our rights under Dancing Rabbit.

BENNETT WEAVER TESTIMONY

DECEMBER 05, 1989

Bennett: This is Bennett Weaver, I would like to give a little report on fellow Indian life in Washington County. I remember very distinctly when I was a small boy how rough life was for an Indian family. The average family was very large. Work was little to be found. It was a struggle just to remain alive, not to mention the necessities of life.

My family was a typical Indian family. There were ten of us: six boys, two girls, mom and dad. My dad had no education; he had worked with his hands all his life. He worked in turpentine, logging, cutting ties for railroad and cutting pulpwood. My mother was a very thrifty woman.

We were able to purchase 60 acres of land, build a home and send the children to school. It was very hard to get any schooling at all because the white people didn't have much education and they didn't want Indians to have any schools. There were no Indian teachers because none were educated. Some of the tribal elders raised the funds and hired the teachers using tribal funds. This was before my time. When I was in grade school the County or State would pay the teachers.

We always ended up with the most unqualified teachers in the system. If the Board of Education had a teacher that no school wanted she was sent to an Indian school. At that time we had five Indian schools in the county. The Community that served the Reeds Chapel School were more fortunate than most because of ties with the Southern Baptist Home Mission Board.

We were able to get some very good teachers. These teachers felt that they were serving the Lord Jesus Christ and wanted to help people. When I was in high school we were able through the missionaries to get two teachers with master degrees. The County did not want to pay the high salary for them to teach an Indian school, but after the missionaries put up such a good argument, they agreed to pay them. This was the only power we had because they would not let us vote.

There were several main factors that brought change to the Indian community. The education of Native Americans was a giant step toward becoming acceptable citizens in the county. Lucille Reed, who later became my wife, myself, Gallasneed Weaver, Tempress Reed, Nola Reed, and Murphy Reed were the first Indians to become educated to teach school. Matthew Taylor and Carol Johnston never came back home. All of these teachers began teaching in

Reeds Chapel School this was an important step, because the Indian students had some of there own to identify themselves with. The parents had someone now they could trust to read and write letters for them. now we had people who could organize, plan and implement goals for the Indians. Today we have many young educated Indians who are working various industries who have taken leadership roles in the community. Some of them are on the Mowa Indian Commission.

The right to vote was another giant step forward for Washington County Indians prior to 1956 Indians in Washington County were not allowed to vote and as a result they had no power to bargain for anything, but in 1956 we took up an offering in the Reeds Chapel Church and Mt. Pleasant Baptist Church to pay transportation expenses for "John L. Isaac," then missionary for the Indians" to go to Montgomery and talk to Attorney General John Patterson about voting rights for the Indians. Brother Isaac undoubtly put up a good argument because the Attorney General sent an executive order instructing Chatom to register Indian voters of Washington County Alabama. As a result of this order things really began to happen, politicians began to come to me and Gallasneed Weaver and ask what they could do for the Indians. Of course, this gave us the opportunity to list some of the things we would like to see happen in the Indian community.

At the top of the list was employing Indians in the two chemical plants in McIntosh, Alabama. I had written an article in the Call News Dispatch trying to get Indians hired in the plants in 1955, but they said they had dressing rooms and water fountains for blacks and whites only.

My argument was that they could create an Indian department considering they knew that Indians lived in the county. Many read the article with enthusiasm but never took any action to hire any Indians at this time. We gradually made some progress, but it was slow because the politicians had to sell our calls to work to the white people. There was much animosity toward Choctaw Indians from the white community. We were a thing from the past that they wanted to forget, and hoped would disappear.

After the Civil Rights Act, Gallasneed Weaver and I called a tribal council meeting to make new plans to get some Indians hired at McIntosh Plants. With this new weapon we thought that we absolutely would have a better start at getting our people hired. When we went to see the company manager they wanted to know who we represented. We said the Indians. They said what Indians, all the Indians are in Oklahoma. I did not know we had Indians in Alabama.

We called a tribal meeting for the Indians and a large number of people showed up. The EEOC representative was really impressed with the turnout of the tribal members. He went to work immediately and the plants began to hire Indians. Now we have Indian foremans at both plants, Van Johnston and Verma Reed.

Many Indians were afraid to openly practice their heritage. Because of the discriminatory laws passed by these states had laws stating that Indians could not testify against a white man. Who would want to be an Indian under such conditions. As a result of this our people wanted to forget their Indian heritage. This is exactly what the local white people wanted. They would call us white but treat us as a minority group. They would say such things as the negros are taking the county over, but because of the Civil Rights Laws the blacks have challenged the Indians.

Mr. Larry Tillman, Principal of the McIntosh High School and I were talking about some possible programs we could get to the Indians since we were not Federally Recognized it would be difficult to get any programs, but we kept trying and searching until we came up across the Title IV Part A Program, which supplements education for Indian people. Mr. Tillman said to me if you can organize the Indians I can get the School Baord to approve the Program. I know a man who wil write the program. So the Title IV Program Part A was born.

While we were working on this program, Mrs. Josephine Rivers was working for the CETA Program for the Creek Indians. Someone told her that the reservation Indians wanted to tighten up the definition of the work Indian, any Indian group would have to be State Recognized before they would be recognized as an Indian group. We contacted a Representative Turner, he said he would be glad to introduce the bill, so our Indian Commission was created.

After centuries of isolation we have still managed to maintain our tribal organization and cultural identity. We have been able to do this because of our faith in the American system of government and the Treaty of Dancing Rabbit Creek. I know that Congress is the only body of our government that can acknowledge our rights as Choctaw Indians and I pray that this will be done as soon as possible.

Statement by Gallasneed Weaver

A Member of the Mowa-Choctaw Tribe
The former Chairman of Alabama Indian Affairs and
Present Principal of Reed's Chapel School

Although our tribe, the Mowa-Band of Choctaw Indians of Southwest Alabama has only been recognized by the legislative process of Alabama since 1979, our people have banned together in a peculiar wooded area of north Mobile and south Washington County. This area encompasses about 30 miles in diameter and the tribe has resided here since the partial tribal removal in the early part of the 19th century. Our tribal heritage has been much like the Choctaws of Mississippi, The Porch band of Creeks of the South Alabama, the Cherokees of North Carolina, and some of the tribes of Lousiana. They all struggled and survived until our governmental system recognized that all Indians of our area didn't go to Oklahoma. Therefore, you can see our tribe as another link in the chain of social injustice that we would humbly ask this honorable committee to address. These forementioned tribes were fortunate to have gotten people in Washington's ears at an earlier date and have now removed their tribes from the poverty lines of tribal status.

Having been born in November 1933, I grew up experiencing, along with my tribe, the wrath of Jim Crowism upon Indians. We were not allowed to vote or testify in court and when the Industrial revolution finally came to the rural areas, the industries here hired the Blacks for certain stratified jobs and the whites for the better paying jobs. The industrial leaders refused to hire any Indian people because of two basic reasons: 1. The big land owners had hinted to them that we were good at the timber business and that we shouldn't be diverted from that business; and 2. They knew, from some past experiences, the Indian wouldn't accept the, "separate but equal", philosophy and policies of the Industrial plants. These policies specified different water fountains, rest rooms, dressing rooms and lunch facilities, and were imposed upon and readily accepted by the Blacks of this time. Since our people wouldn't accept such conditions, our tribal work force was excluded. We only became part of the work force when, former Congressman Jack Edwards won his election. We found him, not only to be a good politician, but also a humanitarian. It was through his effective lobby for the inclusion of our tribe as part of the various companies affirmitive action plan, that we became part of the work force. It was also the Civil Right laws, implemented during the Kennedy and Johnson administrations, that helped bring down the walls of Jim Crowism that had been in place for so long among our people.

Your honor, we can easily see a parallell between this recognition document of the B.I.A. and the Constitution of the United States. The constitution was written by many wise people, but it reflected a white male aristocatic chauvinistic philosophy. But one thing was good about this document. It provided for change, by amendments. It also contained the elastic clause "For the good and welfare of our nation". The Federalist paper promised a Bill of Rights if the people would adopt the Constitution in its present form. True to their word, the people were given the Bill of Rights with the first 10 amendments. Later came the 13th, 14th and 15th which freed the blackman, made him a citizen and gave him the right to vote. In 1920, there came about another change with the 19th Amendment, which gave women the right to vote and opened the door for their useful participation in the government. One Constitutional scholar has said the greatest part of the constitution is the part that provided for change. The 2nd greatest thing is that society has had the wisdom and fortitude to see the need for change and has made the necessary changes as the country became aware of such need.

Unlike the implementation of these constitutional changes, the B.I.A. has made no changes in the document, although they have testified themselves of the need for some changes. They have continued to perpetuate and stagnate the system. May I call your attention to some of the basic weaknesses with the BIA process. It has a double standard. If many of the tribal leaders who helped write the documents should have their rights taken away from them, they wouldn't be able to get recertified, re-authorized or recognized when using the same standards. 2. The scholars of the process know the weakness of the system, but have done nothing to correct or change the process, as was done with our Constitution. The B.I.A. has been self-serving and has produced a group of elite aristocrat-thinking Indian leaders, who have become much like some of the earlier Southerns aristacatic whites, who tried to defend the ways of the Old South in a system in which they would say to the black and Indian, "Washington may have made you citizens, but we control the powers of the state and you must meet all of our local laws, pay poll taxes, recite part of the Constitution, and be able to read and interpret the Constitution, before you register to vote. In the meantime no whites were scrutinzed through the same process. The Federally recognized tribes have grandfathered themselves behind the walls of the system and they are able to use tax money to hire expensive lawyers and lobbiest and fly jet planes from place to place to fight against us as well as other worthy tribes. Such efforts help keep worthy tribes from getting recognized by Congress. The most of these same tribes were once recongnized by Congress themselves. Now they are saying, let me determine your fate. Its almost like having the fox guard the hen house. Mr. Bud Shepard, one of the authors of the B.I.A. policy, visited our tribe for a pre-study of our group, stated that he has never seen a more closely knit group of Indians, a people who have stayed together and perserved their history and culture while enduring great hardship. He went on to say, "If Congress didn't recognized us, we may have trouble making it, because of the way the hoops are layed out at the B.I.A. for our tribe and other tribes like our to jump through for Federal recognition". He went on to say, "In Alabama the capital was burned with all records during the civil war. In 1907, the Washington County Courthouse, a county in which all local records were kept, was burned along with all its records. Also, since our tribe was uneducated, very few records were kept to enhance our chances for success. Dr. Susan Greenbaum, an anthropologist from the University of South Florida, stated, "You are a very credible tribe, I hope some how you will make it to get the recognition that you desire and deserve".

In closing, may I say I have seen many of my elders die while waiting for their dreams of recognition to come true. Mr. Senator, my father is 78 and mother is 76, please let them celebrate with me a birthday of our Federal tribal recognition before they move on into eternity with our maker.

BIOGRAPHY
OF
GALLASNEED WEAVER
A MEMBER OF THE MOWA-CHOCTAW TRIBE

It was November 16, 1933 and the dawn of the great depression, when my parents, Mr. Lee Weaver & Mrs. Nancy Weaver, by the help of God, gave me a chance to experience the joys of this life which started in the piney woods of South Alabama near the little town of McIntosh, an area that the local aborigines refer to as the "heart of Indian Country."

I was fortunate to have grown up at a time when the Southern Baptist missionaries had brought the Gospel,as well as a chance for education,to our tribal neighborhood. The Methodists and the Catholics had started similir programs in other geographic areas of our tribe and served in the interest of their churches.

My mother always encouraged me to get an education. Soon I realized that if I was going to college, I would need to go to an accredited high school. Although our Indian mission school was a good one, it wasn't accredited. After much prayer and consideration, I went to Acadia Baptist Academy of Eunice, Louisiana, a school that had been built to accommodate the Indians and Cajun French of Louisiana. I found the spiritual environment and the quality approach to education very inspirational to my Christian, as well as, intellectual growth. I graduated in May of 1953 and after working for a short time, I enrolled at Bacone Indian College of Muskogee, Oklahoma. My life was enriched while at Bacone with the opportunity to fellowship with so many fine Christian students, faculty members and student from some 53 tribes. Most recently, this same college elected me to the Alumni Hall of Fame and placed me on its Board of Trustees.

In 1956, I entered the U.S. Army to do a two year hitch. I wanted so much to go to Japan or Europe, but instead was sent to Alaska, a place I later learned to love.

After I left Alaska, I came home and enrolled at the University of Redlands at Redlands, California from which I earned my B.A. Degree.

On my way back to California from Alabama to complete my last year of college at the University of Redlands, I married my wife, an Oklahoma Cherokee, Laretta Fay Holt, who immediately became a special part of my life. She has given me so much, but two of the greatest gifts are a healthy son, Kirby Laveral Weaver, who attended Bacone and later graduated from Northeastern State University in Tahlequah, Oklahoma, and is presently working as a coach and math teacher at Robertsdale High, and a lovely daughter, Lagallis Jean Harbuck Weaver, who has acquired her Masters Degree at the same university and is now working at Jackson Middle school in Jackson, Alabama. She gave me a wonderful son-in-law, Kenny Harbuck, who has added much to our life.

After I graduated from Redlands, I came back to Alabama and became employed by the Washington County Board of Education and worked for them for seven years at our tribal school. At this time, I won a fellowship to work on my Masters degree at the University of South Alabama. In 1969 I graduated with a degree in Administration with a Superintendent-Principal Certificate.

After graduating, I was chosen by the Washington County School Board to become Principal of Reed's Chapel Indian School and I have been here ever since.

In 1961, I became the pastor of Rivers Baptist Indian Mission in Sims Chapel, Alabama under, our Field Missionary, to the southwest Alabama Indians, Rev. E. R. Isbell.

In 1984 I was honored by being chosen as Chairman of the Commissioners for the Mowa-Choctaw Tribe, and was extended the opportunity to represent our tribe on the Alabama Indian Affairs Commission. As a member of this distinguished Commission I was honored again by being chosen its Chairman and later served 3 other terms at that position. During these years I was chosen by Alabama's state Governor George C. Wallace, and later Governor Guy Hunt, to represent the Alabama Indians to the Interstate Indian Conference for two different terms and I have represented the Mowa-Choctaw to both the National Conferences of American Indian and the National Indian Education Conference for the last several years of which I hold a life time membership.

I have very much enjoyed each job and position that I have been privileged to have; but one of my greatest pleasures has come from serving as an ambassador for the Indian Tribes of Alabama to the numerous regional and national meetings on the affairs of American Indians and working with other Indian delegates trying to make things better for our people.